

**Before the
Federal Communications Commission
Washington, D.C. 20554**

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| In the Matter of |) | |
| |) | |
| Universal Service Reform |) | WT Docket No. 10-208 |
| |) | |
| Mobility Fund |) | |
| |) | |

NOTICE OF PROPOSED RULEMAKING

Adopted: October 14, 2010

Released: October 14, 2010

Comment Date: (45 days after date of publication in the Federal Register)

Reply Comment Date: (75 days after date of publication in the Federal Register)

By the Commission: Chairman Genachowski and Commissioners Copps, McDowell, Clyburn and Baker issuing separate statements

TABLE OF CONTENTS

| Heading | Paragraph # |
|--|-------------|
| I. OVERVIEW..... | 1 |
| A. Introduction..... | 1 |
| B. Summary | 5 |
| II. BACKGROUND..... | 6 |
| III. NOTICE OF PROPOSED RULEMAKING | 11 |
| A. Overall Design of the Mobility Fund | 11 |
| 1. Legal Authority | 12 |
| 2. Size of the Mobility Fund..... | 13 |
| 3. One Provider Per Area..... | 15 |
| 4. Auction to Determine Awards of Support..... | 16 |
| 5. Identifying Unserved Areas Eligible for Support..... | 20 |
| a. Identifying Unserved Areas by Census Block | 21 |
| b. Offering Support by Census Tract | 25 |
| c. Establishing Unserved Units | 27 |
| d. Distributing Mobility Fund Support Among Unserved Areas | 28 |
| e. Targeting Tribal Areas | 33 |
| 6. Performance Requirements..... | 34 |
| a. Coverage Requirement..... | 34 |
| b. Service Quality and Rates | 37 |
| c. Deployment Schedule | 39 |
| d. Proof of Deployment..... | 40 |
| B. Mobility Fund Eligibility Requirements | 45 |
| 1. ETC Designation | 47 |
| 2. Access to Spectrum to Provide Required Services..... | 50 |
| 3. Certification of Financial and Technical Capability..... | 54 |
| 4. Other Qualifications | 55 |
| C. Reverse Auction Mechanism | 56 |

| | |
|--|-----|
| 1. Basic Auction Design | 58 |
| 2. Application Process | 59 |
| 3. Bidding Process | 63 |
| 4. Information and Competition | 75 |
| 5. Auction Cancellation | 76 |
| D. Post-Auction Process, Administration, Management, and Oversight of the Mobility Fund..... | 77 |
| 1. Administration of the Mobility Fund..... | 77 |
| 2. Post-Auction Application Process..... | 79 |
| a. Post-auction Application..... | 80 |
| b. Ownership Disclosure..... | 82 |
| c. Project Construction..... | 84 |
| d. Guarantee of Performance | 85 |
| e. Other Funding Restrictions | 89 |
| f. Certifications..... | 90 |
| 3. Disbursing Support..... | 91 |
| a. Support Payments | 91 |
| b. Support Liabilities..... | 94 |
| 4. Audits and Record Retention..... | 95 |
| a. Audits..... | 96 |
| b. Record Retention | 98 |
| 5. Delegation of Authority..... | 101 |
| IV. PROCEDURAL MATTERS..... | 102 |
| A. Filing Requirements..... | 102 |
| B. Initial Regulatory Flexibility Analysis..... | 106 |
| C. Paperwork Reduction Act Analysis | 107 |
| V. ORDERING CLAUSES..... | 108 |
| APPENDIX A: Proposed Rules | |
| APPENDIX B: Initial Regulatory Flexibility Analysis | |

I. OVERVIEW

A. Introduction

1. Millions of Americans live in communities where current-generation mobile service is unavailable, and millions more work in or travel through such areas. To accelerate our nation's ongoing effort to close this mobility gap in a fiscally responsible manner, this Notice of Proposed Rulemaking ("NPRM") seeks comment on using reserves accumulated in the Universal Service Fund ("USF") to create a new Mobility Fund. The purpose of the Mobility Fund is to significantly improve coverage of current-generation or better mobile voice and Internet service for consumers in areas where such coverage is currently missing, and to do so by supporting private investment. The Mobility Fund would use market mechanisms – specifically, a reverse auction – to make one-time support available to service providers to cost-effectively extend mobile coverage in specified unserved areas.

2. In the three decades since the Commission issued the first cellular telephone licenses, the wireless industry has continually expanded and upgraded its networks to the point where third generation (often called "advanced" or "3G") mobile wireless services that include both voice telecommunications service as well as e-mail and Internet access are now widely available.¹ But mobility gaps remain a problem for residents, public safety first responders, businesses, public institutions, and travelers,

¹ In this NPRM, we use the terms "current generation," "3G," and "advanced" interchangeably to refer to mobile wireless services that include voice telecommunications service as well as email and Internet access.

particularly in rural areas. Such gaps impose significant disadvantages on those who live, work, and travel in these areas. Moreover, without existing modern wireless infrastructure, they are at risk of much-delayed access to the coming generations of high-speed wireless broadband services. For this reason, the *National Broadband Plan* recommended providing universal service support to promote the national build-out of 3G services as part of a comprehensive set of recommendations to reform the universal service program.² The proposals in this NPRM build on that recommendation.

3. The Commission recently undertook steps for fiscally responsible USF reform when, in the *Corr Wireless Order*,³ we provided instructions for implementing the commitments of both Verizon Wireless and Sprint Nextel to surrender their high-cost universal service support over five years.⁴ In doing so, we directed “that the surrendered support be reserved as a potential down payment on proposed broadband universal service reforms as recommended by the National Broadband Plan, including to . . . support a Mobility Fund to provide wireless broadband service in areas that lack coverage.”⁵

4. The Mobility Fund is one of a set of initiatives to promote deployment of broadband and mobile services in the United States through a financially sensible transformation of USF, using market-

² See Federal Communications Commission, *Connecting America: The National Broadband Plan*, 146-48 (rel. Mar. 16, 2010) (*National Broadband Plan*). That same day, the Commission released a Joint Statement on Broadband stating that “[t]he nearly \$9 billion Universal Service Fund (USF) . . . should be comprehensively reformed to increase accountability and efficiency, encourage targeted investment in broadband infrastructure, and emphasize the importance of broadband to the future of these programs.” Joint Statement on Broadband, GN Docket No. 10-66, *Joint Statement on Broadband*, 25 FCC Rcd 3420, 3421 ¶ 3 (2010).

³ High-Cost Universal Service Support, Federal-State Joint Board on Universal Service, Request for Review of Decision of Universal Service Administrator by Corr Wireless Communications, LLC, WC Docket No. 05-337, CC Docket No. 96-45, *Order and Notice of Proposed Rulemaking*, FCC 10-155 (rel. Aug. 31, 2010) (*Corr Wireless Order*). Corr Wireless Communications, LLC asked that any support reclaimed from Verizon Wireless and Sprint Nextel in connection with conditions placed on their recent mergers, see n.4 *infra*, be redistributed to other competitive eligible telecommunications carriers (“ETCs”).

⁴ On November 4, 2008, the Commission approved, with conditions, the transfer of control of licenses and other authorizations held by subsidiaries and partnerships of ALLTEL from Atlantis Holdings LLC to Verizon Wireless. See Applications of Cellco Partnership d/b/a Verizon Wireless and Atlantis Holdings LLC for Consent to Transfer Control of Licenses, Authorizations, and Spectrum Manager and De Facto Transfer Leasing Arrangements and Petition for Declaratory Ruling That the Transaction Is Consistent with Section 310(b)(4) of the Communications Act, WT Docket No. 08-95, *Memorandum Opinion and Order and Declaratory Ruling*, 23 FCC Rcd 17,444 (2008) (*Verizon Wireless Merger Order*). On the same day, the Commission also approved, with conditions, the transfer of control of licenses held by Sprint Nextel Corporation and Clearwire Corporation to New Clearwire Corporation, which is majority owned by Sprint Nextel. See Sprint Nextel Corporation and Clearwire Corporation Applications for Consent to Transfer Control of Licenses, Leases, and Authorizations, WT Docket No. 08-94, *Memorandum Opinion and Order and Declaratory Ruling*, 23 FCC Rcd 17,570 (2008) (*Sprint Nextel Merger Order*). Among other things, the Commission conditioned its approval of those transactions on those carriers’ voluntary commitments to surrender their high-cost universal service support in equal 20 percent increments over a period of five years from the closing date of the transactions. *Verizon Wireless Merger Order*, 23 FCC Rcd at 17,529-32 ¶¶ 192-97; *Sprint Nextel Merger Order*, 23 FCC Rcd at 17,611-12 ¶¶ 106-08. For purposes of this NPRM, “Verizon Wireless” refers to Cellco Partnership d/b/a Verizon Wireless, as well as any subsidiaries or affiliates subject to the universal service commitments of the *Verizon Wireless Merger Order*. It does not refer to service territories divested by Verizon Wireless pursuant to the *Verizon Wireless Merger Order*. Similarly, “Sprint Nextel” refers to Sprint Nextel Corporation, as well as any subsidiaries or affiliates subject to the universal service commitments of the *Sprint Nextel Merger Order*.

⁵ *Corr Wireless Order* at ¶ 1.

based and incentive mechanisms. In addition, we will continue to pursue other policies that promote the availability of mobile voice services in as much of the country as possible.

B. Summary

5. In this NPRM, we seek comment on the creation of the Mobility Fund to provide an initial infusion of funds toward solving persistent gaps in mobile services through targeted, one-time support for the build-out of current- and next-generation wireless infrastructure in areas where these services are unavailable. Specifically, we seek comment on the following proposals for the Mobility Fund:

- We propose to use \$100 million to \$300 million from the USF to create the Mobility Fund. We propose to proceed in a fiscally responsible manner by using a portion of the several hundred million dollars in annual USF support voluntarily relinquished by Verizon Wireless and Sprint Nextel, which, as noted above, the Commission recently reserved as a down payment on broadband USF reform, so that the overall burden on consumers will not increase as a result of these proposals.⁶
- We propose to use a reverse auction – in which the potential providers of services in identified unserved areas compete for support from the Mobility Fund – to determine which providers get support, which specific geographic areas will receive support, and at what levels.
- We propose to identify the areas unserved by advanced mobile wireless services and seek comment on alternative ways by which we could distribute Mobility Fund support to those unserved areas.⁷ Specifically, we propose to use coverage data compiled by American Roamer and population data from the Census Bureau to identify unserved areas. We seek comment on whether to make support available to any unserved area nationwide or whether to further target support by making it available in a limited set of unserved areas, such as those in counties or states where the percentage of the population with access to 3G services is more than three percentage points below the percentage of nationwide population with such access, which according to data currently available is 98.5 percent. We seek comment on whether we should target Mobility Fund support in this way or whether we should direct the Mobility Fund based on different criteria or in some other way.
- We seek comment on the minimum performance and coverage requirements we should establish for the service to be supported by the Mobility Fund, and on other ways to structure the support so as to ensure delivery of the desired service.
- We propose the following eligibility requirements for those seeking support from the Mobility Fund: (1) a provider must be designated (or have applied for designation) as an ETC, pursuant to Section 214(e) of the Communications Act of 1934, as amended (“Communications Act” or “Act”) for the area in which it seeks to provide service; (2) a provider must have access to spectrum capable of 3G or better service in the geographic area that it will serve; and (3) a provider must certify that it is financially and technically capable of providing service within the specified timeframe.

⁶ See *Corr Wireless Order*.

⁷ For purposes of this NPRM, when we refer to “unserved” or “uncovered” areas we are referring to areas where advanced mobile wireless services are not available.

- We propose performance standards suitable for assessing and managing the program; mechanisms to deter waste, fraud, and abuse; and methods to recover improperly disbursed or used funds.

II. BACKGROUND

6. The Communications Act created the Commission for the purpose of “mak[ing] available, so far as possible, to all the people of the United States” efficient wire and radio communications services.⁸ The Communications Act mandates that the Commission base its policies for preserving and advancing universal service on a principle that “access to advanced communications and information services should be provided in all regions of the Nation.”⁹ The statute also requires that universal service policies follow the principle that consumers in “rural, insular, and high cost areas” should have access to services “that are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas.”¹⁰ Moreover, the services to be provided are “an evolving level of telecommunications services ... taking into account the advances in telecommunications and information services.”¹¹

7. The USF is an essential resource for achieving this goal.¹² As the *National Broadband Plan* recognized, while the USF and earlier programs played a critical role in disseminating voice service in the last century, the current USF was not designed to target support for broadband explicitly.¹³ We therefore recognize the need for the USF to be modernized to support the services of the future provided over advanced networks.

8. Establishing the Mobility Fund, which seeks to help overcome cost barriers to expanding advanced mobile wireless services, is a critical step in modernizing the USF. The Mobility Fund would take a portion of the funds that would have gone to Verizon Wireless and Sprint Nextel to support wireless service in areas that were largely served by one or more other providers, and redirect that money to provide targeted support for cost-effective network build-out in unserved communities. We are also addressing other critical components of universal service in other proceedings. The Connect America Fund Notice of Inquiry and NPRM, which will help assure the availability of broadband on an ongoing basis, was the first step toward modernizing the USF to provide support for continuing advances in communications networks and services.¹⁴

9. The Mobility Fund proposed in this NPRM builds on prior proposals in connection with modernizing the structure and operation of the USF. It was the State Members of the Federal-State Joint Board on Universal Service (“Joint Board”) who first recognized the importance of directly addressing the infrastructure needs in those areas unserved by mobile service, and in a 2007 Recommended Decision, the Joint Board recommended that the Commission establish a Mobility Fund.¹⁵ In the Recommended

⁸ 47 U.S.C. § 151.

⁹ 47 U.S.C. § 254(b)(2) and (3).

¹⁰ 47 U.S.C. § 254(b)(3).

¹¹ 47 U.S.C. § 254(c).

¹² 47 U.S.C. § 254(b).

¹³ See *National Broadband Plan* at 140.

¹⁴ Connect America Fund, WC Docket No. 10-90, GN Docket No. 09-51, WC Docket No. 05-337, *Notice of Inquiry and Notice of Proposed Rulemaking*, 25 FCC Rcd 6657 (2010) (*CAF Notice of Inquiry*).

¹⁵ See Federal-State Joint Board on Universal Service, WC Docket No. 05-337, CC Docket No. 96-45, *Recommended Decision In the Matter of High-Cost Universal Service Support*, FCC07J-4 (Fed.-State Jt. Bd., rel. Nov. 20, 2007) (*Recommended Decision*). The Commission put the *Recommended Decision* out for public comment (continued....)

Decision, the Joint Board acknowledged that the universal availability of mobile services was a national priority and proposed that a Mobility Fund be created to subsidize the costs of construction of new facilities in “unserved” areas where significant population density lacked wireless voice service.¹⁶ The Joint Board also contemplated that funds would be available to construct facilities along roads and highways, to advance important public safety interests.¹⁷ Finally, the Joint Board recommended that some funds be made available – at least for some limited period of time – to provide continuing operating subsidies to carriers where service is essential but where usage is so slight that there is not a business case to support ongoing operations, even with substantial support for construction.¹⁸

10. More recently, following up on the Joint Board’s previous work and recommendation, the *National Broadband Plan* recommended a Mobility Fund in connection with broader reforms of the USF.¹⁹ The plan recommended providing targeted, one-time support for deployment of 3G infrastructure in order to bring all states to a minimum level of mobile service availability, without increasing the size of the USF. The *National Broadband Plan* observed that supporting 3G build-out in states with 3G coverage lagging the national average would enable those states to catch up with the rest of the nation and improve the business case for 4G rollout in harder-to-serve areas.

III. NOTICE OF PROPOSED RULEMAKING

A. Overall Design of the Mobility Fund

11. Drawing on some of the USF support voluntarily relinquished by Verizon Wireless and Sprint Nextel and reserved by the Commission, the Mobility Fund would make available non-recurring support to providers to deploy 3G or better networks where these services are not currently available.²⁰ In order to maximize the reach of available funds, we propose to provide Mobility Fund support to at most one provider in any given unserved area.²¹ We propose to utilize a reverse auction mechanism to compare all offers to provide service across the unserved areas eligible for participation in the Mobility Fund program, which should give providers incentives to seek the least support needed and enable identification of the providers that will achieve the greatest additional coverage with the limited funding available.²² We propose to specify unserved areas eligible for support on a census block basis, using industry data compiled by American Roamer, and to conduct competitive bidding to offer support in unserved census blocks grouped by census tracts.²³ We seek comment on a number of alternative

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on January 29, 2008. High Cost Universal Support; Federal-State Joint Board on Universal Service, WC Docket No. 05-337, CC Docket No. 96-45, *Notice of Proposed Rulemaking*, 23 FCC Rcd 1531 (2008).

¹⁶ *Recommended Decision* at ¶ 16.

¹⁷ *Id.*

¹⁸ *Id.* at ¶¶ 18, 38.

¹⁹ *National Broadband Plan* at 146.

²⁰ See *Corr Wireless Order*. See also n.4 and 5 *supra*.

²¹ As noted above, for purposes of this NPRM, when we refer to “unserved” or “uncovered” areas we are referring to areas where advanced mobile wireless services are not available.

²² Paul Milgrom, Gregory Rosston, Andrzej Skrzypacz & Scott Wallsten, “Comments of 71 Concerned Economists: Using Procurement Auctions to Allocate Broadband Stimulus Grants,” submitted to National Telecommunications and Information Administration and the Department of Agriculture’s Rural Utilities Service (Apr. 13, 2009) (*71 Economists’ Proposal*). The *71 Economists’ Proposal* can be found in Appendix B of the *CAF Notice of Inquiry*.

²³ As the *National Broadband Plan* noted, “American Roamer reports *advertised* coverage as reported by many carriers who all use different definitions of coverage.” *National Broadband Plan* at 39 (emphasis in original). As a consequence, the data from American Roamer may overstate the coverage actually experienced by consumers.

methods we could use to distribute Mobility Fund support, including distributing support to any of the identified census tracts nationwide or targeting it to those identified census tracts in any county nationwide or in states where 3G deployment most significantly lags behind the percentage of nationwide population with 3G access. We propose to support only wireless networks performing as well as or better than 3G networks currently operating in the United States, for example networks using HSPA or EV-DO. We propose that parties receiving support be required to demonstrate the deployment and offering of service in previously uncovered areas within a specified period of time. We seek comment on ways to structure the program so that it directs funding to those places where deployment of advanced mobile wireless service is otherwise not likely to happen.

1. Legal Authority

12. We propose to distribute Mobility Fund support through the universal service program. Accordingly, the Commission's legal authority to create the Mobility Fund is based upon and delimited by its legal authority to distribute universal service funds. The Commission has authority to use universal service funds to support an evolving level of telecommunications services, taking into account advances in telecommunications and information technologies and services.²⁴ In addition, various statutory and regulatory requirements apply to the use of these funds.²⁵ We request comment on our authority to implement the proposals contained in this NPRM. We also seek comment on whether these proposals require any revisions to our existing regulations or to our existing authority. We further ask that commenters address, to whatever extent necessary, whether any alternative proposals that they suggest are within our current legal authority or require any expansion of that authority.

2. Size of the Mobility Fund

13. We propose to use \$100 million to \$300 million in USF high-cost universal service support to fund, on a one-time basis, the expansion of current-generation mobile wireless services through a new Mobility Fund. Prior voluntary agreements by Verizon Wireless and Sprint Nextel to surrender USF high-cost support²⁶ will likely make several hundred million dollars available annually that can be used for other USF purposes without increasing the overall size of the high-cost fund. The *National Broadband Plan* recommended using these foregone funds to implement its recommendations, including the creation of the Mobility Fund, and subsequently the Commission adopted an Order and Notice of Proposed Rule Making implementing the voluntary commitments.²⁷

14. The ultimate impact of any amount of support would depend upon a variety of factors, including the extent to which non-recurring funding makes it possible to offer service profitably in areas previously uneconomic to serve, what percentage of the support must fund new facilities as opposed to upgrades to pre-existing facilities, the percentage of total capital costs that support must provide, and the extent to which new customers adopt services newly made available. We seek comment on the level of support to be provided through the Mobility Fund. Specifically, we ask commenters to consider whether there is an optimal size for the Mobility Fund. For instance, is there an amount that would exceed what is needed to target those areas where non-recurring support could be used most effectively to expand coverage within a relatively short timeframe? What amount would be too small to effectively jump-start deployment so as to provide service in the places where it might not otherwise become available?

²⁴ 47 U.S.C. § 254(c).

²⁵ See generally 47 U.S.C. §§ 214, 254; 47 C.F.R. § 54.101.

²⁶ See n. 4 *supra*.

²⁷ *National Broadband Plan* at 146-47. See generally *Corr Wireless Order*.

3. One Provider Per Area

15. Given our objective of using the Mobility Fund to support the provision of expanded advanced mobile wireless services to as much of the currently unserved population in identified areas as possible, we propose that only one entity in a given geographic area receive Mobility Fund support. We recognize that mobile wireless providers have expressed competitive concerns, especially given that 3G service may use either CDMA or GSM technology, about the possibility of limiting support to one provider.²⁸ In light of these concerns, we propose below certain terms and conditions of support to encourage possibilities for competition. We seek comment on our proposal to make Mobility Fund support available to only one provider per area.

4. Auction to Determine Awards of Support

16. We propose to use a competitive bidding mechanism to determine the entities that will receive support under the Mobility Fund and the amount of support they will receive – that is, we propose to award support based on the lowest bid amounts submitted in a reverse auction, as we will discuss in more detail below. Such a mechanism should allow the market to reveal the costs of providing expanded access to advanced mobile services in unserved areas. This should allow us to select the providers that require the least support without requiring onerous cost showings by applicants and without guaranteeing that support payments will cover all, or any specific percentage of, the providers' actual costs.

17. In this reverse auction, which we propose to conduct using a single round of bidding, applicants formulating their bids would have to evaluate carefully the amount of support they need to provide the required services. In general, bidders would not want to overstate the support they require since they would be competing against other providers for limited support funds and a higher bid would reduce their chances of winning. At the same time, they would not want to understate the support they require, since they might be awarded such support based on a bid amount that does not cover their costs and then be expected to provide services to meet the performance requirements. As a result, the submitted bids should present a good estimate of the actual costs to the bidders of providing advanced mobile services as described above in the areas on which they bid to expand service. We seek comment generally on the use of a competitive bidding mechanism to determine recipients of Mobility Fund support and support amounts, and particularly, on the use of a single round reverse auction format.

18. More specifically, as described in more detail below, we propose to determine winning bidders for Mobility Fund support based on the lowest per-unit bids, using the population of unserved areas (and perhaps other characteristics, such as road miles)²⁹ as units and taking into account the requirement that there be no more than one Mobility Fund recipient in any particular area. The auction mechanism would compare all per-unit bids across all areas (that is, compare all bids against all other bids, rather than compare all bids for a single area), and order all the submitted bids from lowest per-unit amount to highest. The bidder making the lowest per-unit bid would first be assigned support in an amount equal to the amount needed to cover the population (or units based on other characteristics)

²⁸ See, e.g., Notice of Ex Parte Presentation by T-Mobile USA, Inc., WC Docket 10-90, dated September 7, 2010 (urging Commission to design Mobility Fund to enable customers to roam in rural areas no matter what wireless technology they may use); Notice of Ex Parte Presentation by Rural Cellular Association, WC Docket No. 10-90, dated September 10, 2010 (urging funding to be competitively and technologically neutral); Notice of Ex Parte Presentation by Penasco Valley Telephone Cooperative, WC Docket 10-90, dated September 24, 2010 (urging preference be given to entities that propose to use a "more efficient and advanced 3G technology, such as LTE" instead of "[o]ther 3G technologies (e.g., EVDO) [that] will have to be replaced when implementing 4G.")

²⁹ We note that some areas do not have roads or have relatively few roads, so using road miles could present challenges in making comparisons across different unserved areas.

deemed unserved in the specific area at the per-unit rate that was bid.³⁰ Support would continue to be assigned to the bidders with the next lowest per-unit bids in turn, as long as support had not already been assigned for that geographic area, until the running sum of support funds requested by the winning bidders was such that no further winning bids could be financed by the money available in the Mobility Fund.³¹

19. By awarding support to those bidders that are able to cover units in unserved areas at the least cost to the Mobility Fund, the greatest amount of population in the identified unserved areas can be covered with the available funds. We seek comment on this method of determining recipients of Mobility Fund support. We also seek comment on determining payment amounts as proposed – by multiplying the winning per-unit bid amounts by the units deemed unserved.

5. Identifying Unserved Areas Eligible for Support

20. We propose to identify unserved areas on a census block basis and, because individual census blocks are so small, we propose to conduct bidding to offer Mobility Fund support in unserved census blocks grouped by census tracts. We further seek comment on alternative ways to distribute support to these unserved areas.

a. Identifying Unserved Areas by Census Block

21. As a first step in identifying those areas for which applicants can bid for Mobility Fund support, we propose to determine the availability of service at the census block level, using a widely available dataset. Census blocks are the smallest geographic unit for which the Census Bureau collects and tabulates decennial census data, so determining coverage by census block should provide a detailed picture of the availability of 3G mobile services. By the end of the first quarter of 2011, census data from the 2010 decennial census should be available on a census block level.³² We propose to use that data when it becomes available and seek comment on this proposal. For now, we will use in our discussion the projected census block data from Geolytics Block Estimates and Block Estimates Professional databases (2009).

22. Specifically, we propose to use American Roamer data identifying the geographic coverage of networks using EV-DO, EV-DO Rev A, and UMTS/HSPA as a measure of availability of current-generation mobile wireless services. For each census block, we would observe whether the data indicates that the geometric center of the block – referred to as the centroid – is covered by such mobile wireless services. If the data indicates that the centroid is not covered by such services, we propose to consider that census block as unserved. Alternatively, we could use the data to obtain the geographic proportion of the block that is uncovered – the proportional method. We could then consider unserved any census block where the data indicates that more than 50 percent of the area is unserved. Or, we could consider unserved that fraction of the census block's population (or other units).

23. We seek comment on our proposed use of American Roamer data to determine areas unserved by current-generation mobile wireless services. Are there distinctions in the way carriers report coverage to American Roamer that we should consider when using the data? Are there alternative available datasets we can use instead of, or in addition to, American Roamer data that would be more

³⁰ For example, if the lowest per-unit bid were \$100 per person, the bidder placing that bid would be awarded support in the amount of \$100 times the population of the area on which it bid.

³¹ We note that we propose below to use a two-stage application process pursuant to which winning bidders will be subject to post-auction review of a long-form application prior to award of support.

³² See “2010 Census Frequently Asked Questions” – “Topic 19: Census Data – Availability and Use,” available at http://2010.census.gov/partners/pdf/2010_TQA_Agent_FAQs_english.pdf.

reliable or better suited for identifying unserved areas? We seek comment also on the proposed centroid method of determining unserved census blocks and on the proportional coverage alternative we describe. Is the centroid method likely to identify areas that are good candidates for support consistent with the objectives of the Mobility Fund? Are there other transparent and workable methods for using the available data to define unserved areas? In addition, we seek comment on the extent to which the availability in unserved census blocks of other supported services using non-mobile wireless technologies should be a factor in determining whether those census blocks should be eligible for Mobility Fund support.

24. We recognize that data on mobile services coverage may change over a relatively short timeframe. Therefore, we propose to delegate to the Wireless Telecommunications Bureau (“Wireless Bureau”) the authority to identify unserved census blocks prior to announcing a Mobility Fund auction, using the method we adopt and the most recent data available for that purpose.

b. Offering Support by Census Tract

25. While we propose to identify unserved areas at the census block level using the method described above, we propose to group unserved census blocks by larger areas – census tracts – as a basis for competitive bidding, since individual census blocks may be too small to serve as a viable basis for providing support.³³ More specifically, we propose to accept bids for support to expand coverage to all the unserved census blocks within a particular census tract.³⁴

26. We seek comment on whether census tracts are the most appropriate basic geographic unit for providing support to expand coverage. Are there other geographic units by which we might group unserved census blocks that might better balance the need to identify discrete unserved areas for which we propose to require coverage under the Mobility Fund with business plan requirements of wireless providers?³⁵

c. Establishing Unserved Units

27. We propose at a minimum to establish the number of units in each unserved census block based on population. We also seek comment on whether we should take into account characteristics such as road miles, traffic density, and/or community anchor institutions in determining the number of units in each unserved census block to be used for assigning support under the Mobility Fund.³⁶ For example, should we utilize data compiled by the Department of Transportation (such as Traffic Analysis Zones) or data on community anchor institutions to establish the number of units in the census block that will be

³³ Census tracts have between 1,500 and 8,000 inhabitants and average about 4,000 inhabitants. Each census tract consists of multiple census blocks and every census block fits within a census tract. There are over 8 million census blocks nationwide.

³⁴ We note that, as discussed below, a provider receiving support would be considered to cover a particular census block when it demonstrates compliance with the performance requirements adopted by the Commission, and not simply by covering the block’s centroid.

³⁵ We recognize that, as with any networked service, the benefits of expanding the availability of service accrue not only to the additional population reached by the expansion but also to the population already covered. Because there may be both commercial and public interest benefits in expanding service into areas in which the resident covered population is relatively low, we do not propose to set an absolute minimum resident population in an area below which a subsidy should not be provided to the area.

³⁶ We note that our proposal to require drive tests in order to demonstrate service (*see* para 40, *infra*), if adopted, would mean that providers receiving support would have to cover designated roads whether or not we decide to use road miles as a factor in determining the number of units in unserved blocks.

considered unserved?³⁷ Using such additional factors in determining the units in each unserved area may better represent the public benefits of providing new access to mobile services. Are there other factors that we should take into account when assessing coverage of unserved areas, such as work or recreation sites; anchor institutions such as schools, libraries, and hospitals; or accessibility to a road system? We ask that commenters address how we should measure the factors on which we seek comment as well as any other factors they advocate, and how coverage for one type of unit, such as a work site, should compare with coverage for other units, such as resident population, or whether such comparisons would be appropriate.

d. Distributing Mobility Fund Support Among Unserved Areas

28. The *National Broadband Plan* recommended creation of a Mobility Fund as a means of bringing all states to a minimum level of 3G (or better) mobile service availability. Here we seek comment on various methods we could use to distribute Mobility Fund support among unserved areas, including ways to target support to places that significantly lag behind the level of 3G coverage generally available nationwide.

29. We could make eligible for Mobility Fund support any area nationwide that we deem to be unserved, including territories. Thus, we seek comment on whether, if we were to adopt our proposal above for identifying census tracts with at least one unserved census block, we should make available for bids all such identified census tracts across the country.

30. We also seek comment on alternative ways of limiting Mobility Fund support to places that lag significantly behind the level of 3G coverage nationwide. Based on May 2010 American Roamer data and November 2009 population estimates, 98.5 percent of the population nationwide resides in areas with access to 3G services.³⁸ We note that, as proposed above, we would be using updated coverage and population data to determine areas unserved by 3G prior to any Mobility Fund auction, so it is possible that the level of nationwide coverage could change. Therefore, we seek comment on various ways to identify places that lag significantly behind that level of coverage based on more updated data.

31. For instance, we seek comment on making Mobility Fund support available for unserved census blocks in census tracts in any county nationwide where the countywide percentage of population with access to 3G services is more than three percentage points below the level of 3G deployment nationwide as determined prior to an auction based on updated data. We also seek comment on targeting Mobility Fund support to unserved blocks in census tracts in those states where the statewide percentage of population with access to 3G services is more than three percentage points less than the percentage of the national population with such access. Alternatively, we seek comment on whether we should target an expanded list of counties or states, for example, those with 3G coverage levels that are more than two percentage points below the nationwide level. We also invite suggestions of other means for identifying the counties or states that the Mobility Fund should target.

32. We invite comment on all of the above alternatives – distributing support among unserved areas nationwide and various methods for targeting support to a subset of unserved areas. We seek comment on the relative merits and drawbacks of these alternative approaches. In particular, we welcome any insights commenters can provide regarding which of these alternatives would most effectively utilize Mobility Fund support to benefit consumers through expanded 3G coverage. We also

³⁷ A traffic analysis zone (“TAZ”) is a special area delineated by state and/or local transportation officials for tabulating traffic-related data- especially journey-to-work and place-of-work statistics. A TAZ usually consists of one or more census blocks, block groups, or census tracts. For more information on TAZs, see http://www.census.gov/geo/www/cob/tz_metadata.html.

³⁸ Geolytics Nov. 2009 Population Estimates, American Roamer Advanced Services May 2010.

seek commenters' views on which of these ways of distributing Mobility Fund support would best help ensure that places with the lowest levels of 3G coverage will not fall even farther behind as the industry begins to deploy the next generation of 4G mobile broadband service. Finally, we note that some areas that we identify as lacking 3G coverage will have some level of mobile voice service, while other identified areas will have no mobile wireless service at all. We seek comment on whether and how we might prioritize support toward unserved areas that currently lack any mobile wireless service.

e. Targeting Tribal Areas

33. We seek comment on whether we should reserve funds for developing a Mobility Fund support program targeted separately to Tribal lands that trail national 3G coverage rates.³⁹ Communities on Tribal lands have historically had less access to telecommunications services than any other segment of the population.⁴⁰ Available data illustrates that less than ten percent of residents on Tribal lands have access to broadband.⁴¹ Also, Tribal lands are often in rural, high-cost areas, and present distinct connectivity challenges.⁴² As a result, the *National Broadband Plan* noted that Tribes need substantially greater financial support than is presently available to them, and accelerating Tribal broadband will require increased funding.⁴³ We have recognized that Tribes are inherently sovereign governments that enjoy a unique relationship with the federal government.⁴⁴ In turn, we have reaffirmed our policy to promote a government-to-government relationship between the FCC and federally-recognized Indian tribes.⁴⁵ Because this relationship warrants a tailored approach that takes into consideration the unique characteristics of Tribal lands,⁴⁶ we believe addressing Mobility Fund support for Tribal lands on a separate track will be beneficial in providing adequate time to coordinate with American Indian Tribes and Alaska Native Village governments and seek their input.

³⁹ "Tribal Lands" is defined as "any federally recognized Indian tribes reservation, pueblo or colony, including former reservations in Oklahoma, Alaska Native regions established pursuant to the Alaska Native Claims Settlements Act (85 Stat. 688), and Indian Allotments." See also 47 C.F.R. § 54.400(e).

⁴⁰ See *National Broadband Plan* at 152, citing *Extending Wireless Telecommunications Services to Tribal Lands*, WT Docket No. 99-266, *Report and Order and Further Notice of Proposed Rule Making*, 15 FCC Rcd 11,794, 11,798 (2000).

⁴¹ See *National Broadband Plan* at 152.

⁴² The *National Broadband Plan* observed that many Tribal communities face significant obstacles to the deployment of broadband infrastructure, including high build-out costs, limited financial resources that deter investment by commercial providers and a shortage of technically trained members who can undertake deployment and adoption planning. *Id.*

⁴³ *Id.*

⁴⁴ Statement of Policy on Establishing a Government-to-Government Relationship with Indian Tribes, *Policy Statement*, 16 FCC Rcd 4078 (2000) (*Tribal Policy Statement*); see also *National Broadband Plan* at 146. The United States currently recognizes more than 565 American Indian Tribes and Alaska Native Villages. See *The Federally Recognized Indian Tribe List Act of 1994*, Pub. L. 103-454, 108 Stat. 4791 (1994) (Secretary of the Interior is required to publish in the Federal Register an annual list of all Indian Tribes which the Secretary recognizes to be eligible for the special programs and services provided by the United States to Indians because of their status as Indians).

⁴⁵ *Tribal Policy Statement*, 16 FCC Rcd at 4079-80.

⁴⁶ *National Broadband Plan* at 146.

6. Performance Requirements

a. Coverage Requirement

34. We propose to establish a coverage requirement that will ensure that Mobility Fund support is put to the purpose for which it is intended – to expand coverage in unserved areas. We seek comment here on the percentage of resident population in the census blocks deemed “unserved” we should require be covered by any party receiving support for a particular census tract. Should we require 100 percent coverage? Or would it be appropriate to require a level of coverage of between 95 and 100 percent of the resident population of census blocks deemed unserved in order to balance our goal of expanding service with concern that excessively high costs to serve a few residents in an area might deter providers from bidding to cover areas otherwise well suited for Mobility Fund support? We note that should we decide to require less than 100 percent coverage, recipients would receive support based on the percentage of coverage actually achieved, provided that they cover at least the required percentage.

35. Is a performance requirement as outlined above appropriate, given our proposed method of determining unserved areas, our proposed use of per-unit bids to determine the set of winning bidders, and our proposal that we will determine support amounts based on the units deemed unserved in the census blocks within the tract? We ask commenters to consider how we should monitor compliance with any coverage requirement, and to address the ways in which monitoring may create incentives for support recipients to further the goals of the Mobility Fund program. We invite commenters describing any alternatives to our proposal to explain with specificity why such alternatives would be preferable. To ensure that the Mobility Fund supports service where it is actually needed, should we require winning bidders to actively market their service in the area(s) for which they bid, and/or to provide service to a specified number or percentage of consumers in such areas by certain milestone dates?

36. We also make proposals to encourage possibilities for competition in the market for 3G or better services in the geographic areas in which we provide support. First, we propose that any new tower constructed to satisfy Mobility Fund performance obligations provide the opportunity for collocation. We seek comment on this proposal. Should we require any minimum number of spaces for collocation on any new towers and/or specify terms for collocation? In addition, we propose that the use of Mobility Fund support be conditioned on providing data roaming on reasonable and not unreasonably discriminatory terms and conditions on 3G and subsequent generations of mobile broadband networks that are built through Mobility Fund support. We seek comment on this proposal and ask that commenters provide specific information on the impact and/or the importance of such requirements in promoting the availability of advanced mobile services.

b. Service Quality and Rates

37. We propose that Mobility Fund support be used to expand the availability of advanced mobile communications services comparable or superior to those provided by networks using HSPA or EV-DO, which are commonly available 3G technologies.⁴⁷ As detailed in connection with proof of

⁴⁷ Universal service support may be provided for services based on widely available current generation technologies – or superior next generation technologies available at the same or lower costs – even though supported services could be based on earlier technologies. Technologies used to provide the services supported by universal service funds need not be technologies that are strictly limited to providing the particular services designated for support. *See* Federal-State Joint Board on Universal Service, *Order and Order on Reconsideration*, 18 FCC Rcd 15,090, 15,095-96 ¶ 13 (2003) (“We recognize that the network is an integrated facility that may be used to provide both supported and non-supported services. We believe that . . . our policy of not impeding the deployment of plant capable of providing access to advanced or high-speed services is fully consistent with the Congressional goal of ensuring access to advanced telecommunications and information services throughout the nation.”) (subsequent history omitted).

deployment requirements, supported networks would demonstrate their quality of service by proving that they have achieved particular data rates under particular conditions. We propose that these data rates be comparable to those provided by networks using the basic functionality of HSPA or EV-DO. We would not, however, require that supported parties use any particular technology to provide service. Instead, we propose to use widely deployed technologies to define a baseline of performance that any supported network must meet or exceed. We seek comment on this proposal. Should supported networks be required to provide data rates comparable to 4G networks? Alternatively, should supported networks be required to present a path to 4G service?

38. We also seek comment on how to implement, in the context of the Mobility Fund, the statutory principle that supported services should be made available to consumers in rural, insular, and high-cost areas at rates that are reasonably comparable to rates charged for similar services in urban areas.⁴⁸ Given the absence of affirmative regulation of rates charged for commercial mobile services, as well as the rate practices and structures used by providers of such services, how can parties demonstrate that the rates they charge in areas where they receive support are reasonably comparable to rates charged in urban areas? What should we use as a standard for “reasonably comparable” and “urban areas” in this context? What should be the consequence of failing to make the required showing?

c. Deployment Schedule

39. We propose that recipients be required to meet certain milestones for the provision of service in each unserved census block in a tract in order to remain qualified for the full amount of any Mobility Fund award. For example, we could require that recipients achieve fifty percent of the coverage requirement within one year after qualifying for support. We seek comment on this proposal and on appropriate coverage percentages and time periods for such a milestone. Are there critical factors that should be taken into account in establishing timetables for rollout in different areas, such as weather conditions or limited construction seasons? We note that service providers will have to comply with the Commission’s rules implementing the National Environmental Policy Act and other federal environmental statutes,⁴⁹ as well as all local requirements for construction. Are there areas where those requirements would make it appropriate to adopt alternative schedules?

d. Proof of Deployment

40. Parties supported by the Mobility Fund must provide 3G or better mobile coverage in specific areas previously deemed unserved by 3G. We propose that parties satisfy their performance requirement by proving that they have deployed a network covering the relevant area and capable of meeting certain minimum standards. We propose that data from the drive tests conducted after construction and optimization of the network be used to determine whether these requirements have been met. By drive tests, we refer to tests service providers normally conduct to analyze network coverage for mobile services in a particular area, *i.e.*, measurements taken from vehicles traveling on roads in the area. More specifically, we propose that recipients of Mobility Fund support would provide data from their drive tests showing mobile transmissions to and from the network meeting or exceeding the following minimum standards: outdoor minimum of 200 kbps uplink and 768 kbps downlink to handheld mobile devices at vehicle speeds up to 70 MPH. These data rates should be achieved with 90 percent coverage area probability at a sector loading of 70 percent. The transmissions would be required to support mobile voice and data.⁵⁰ We propose that the drive test would be conducted over all Interstate, US, and State

⁴⁸ 47 U.S.C. § 254(b)(3).

⁴⁹ 47 C.F.R. Ch. 1, Subpart I.

⁵⁰ “The public switched telephone network is not a single-use network. Modern network infrastructure can provide access not only to voice services, but also to data, graphics, video, and other services. . . . Thus, although the high (continued....)

routes in the area, as well as any other roads that the applicable State Agency regulating the provision of telecommunications services deems essential to service. We propose that drive test data satisfying the foregoing requirements should be submitted within two months of a site providing service or two years of the date support is first provided, whichever comes earlier. We seek comment on these proposals.

41. As discussed, our proposal would not require that providers employ any particular type of technology in expanding coverage. Nevertheless, we seek comment on whether there are reasons to adopt technology-specific minimum standards. Is there any risk that providers will deploy particular technologies in inefficient ways or ways that limit their capacity for future growth in order to meet the minimum standards outline above? Or should we require superior performance from certain technologies that are capable of far exceeding the minimum requirements? For example, should we require that 4G technologies deployed with support satisfy minimum standards greater than 3G technologies deployed with support?

42. We seek comment on how to determine the roads that must be included in any drive tests subject to review. Would it be sufficient to cover Interstates, US Routes, and State Routes? Do circumstances vary sufficiently from state to state or region to region such that different approaches should be adopted for different states? What parties are likely to have the best available information regarding what roads are most important for mobile coverage? Should those parties be involved in the process of determining the roads that must be included in the drive tests?

43. To demonstrate coverage of the population within an unserved area, we propose that bidders submit in electronic Shapefiles⁵¹ site coverage plots from a standard RF prediction tool that utilizes high resolution terrain data and has been calibrated to match the results of drive tests to the extent possible. These plots would be submitted along with the drive test data, preferably on the same plot, and each will display the same coverage threshold parameter, with adjustments to account for drive test configuration specified as necessary. The coverage threshold selected would be one that is a) sufficient to initiate and hold a voice call, and b) is mathematically capable using standard link budget calculations of supporting the minimum data rate requirements specified above. These link budget calculations showing derivation of the threshold would also be provided. The scale of the plots would be at least 1:240,000 such that reasonable coverage resolution is evident. In addition, the plots would be accompanied by all relevant site data, including site coordinates, antenna type(s), radiation centers (AGL), Effective Isotropic Radiated Powers ("EIRPs"), antenna azimuths, and antenna tilts. These plots would also include major roadways, census tract boundaries, and county (or its equivalent) and state boundaries, as well as the boundaries between served and unserved census blocks, as previously determined by the Commission, so that the site's coverage can easily be compared to areas previously deemed unserved. The specific census blocks may be identified on the plot or listed in accompanying data. Lastly, the plots would show the population previously deemed unserved of each block and the percentage of these that are now served.

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cost loop support mechanism does not support the provision of advanced services, our policies do not impede the deployment of modern plant capable of providing access to advanced services." Federal-State Joint Board on Universal Service, Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers, *Fourteenth Report and Order, Twenty-Second Order on Reconsideration, and Further Notice of Proposed Rulemaking* in CC Docket No. 96-45, and *Report and Order* in CC Docket No. 00-256, 16 FCC Rcd 11,244, 11,322 ¶ 200 (2001).

⁵¹ The ESRI Shapefile format is a commonly used GIS (Geographic Information System) file format representing vector data. The technical standards for this format can be obtained at <http://www.esri.com/library/whitepapers/pdfs/shapefile.pdf>.

44. We propose that parties receiving support be required to file annual reports with the Commission demonstrating the coverage provided with support from the Mobility Fund for five years after qualifying for support. We propose that the reports include maps illustrating the scope of the area reached by new services, the population residing in those areas (based on Census Bureau data and estimates), and information regarding efforts to market the service to promote adoption among the population in those areas. In addition, we propose that each party receiving support be required to include in its annual reports all drive test data that the party receives or makes use of, whether the tests were conducted pursuant to Commission requirements or any other reason. We seek comment on this proposal and discussion of any alternatives regarding the collection of information about supported services newly offered in previously unserved areas.

B. Mobility Fund Eligibility Requirements

45. In compliance with statutory requirements and to help ensure the commitment of applicants, we propose certain minimum requirements for those entities wishing to receive support from the Mobility Fund. Specifically, we propose that a provider be required to (1) be designated (or have applied for designation) as a wireless Eligible Telecommunications Carrier (“ETC”) pursuant to Section 214(e) of the Act, by the state public utilities commission (“PUC”) (or the Commission, where the state PUC does not designate ETCs) in any area that it seeks to serve; (2) have access to spectrum capable of 3G or better service in the geographic area to be served; and (3) certify that it is financially and technically capable of providing service within the specified timeframe. We propose to require that, subject to these requirements, applicants be eligible to submit bids seeking support to deploy service in multiple unserved areas. We seek comment on these minimum requirements, inquire whether other minimum standards are desirable, and solicit comment on other provider eligibility issues.

46. We propose a two-stage application process similar to the one we use in spectrum license auctions. Based on the eligibility requirements for Mobility Fund support, we would require a pre-auction “short-form” application to establish eligibility to participate in the auction, relying primarily on disclosures as to identity and ownership and applicant certifications, and perform a more extensive, post-auction review of the winning bidders’ qualifications based on required “long-form” applications. Such an approach should provide an appropriate screen to ensure serious participation without being unduly burdensome. This would allow us to move forward quickly with the auction, which would speed the distribution of funding and ultimately the provision of advanced mobile wireless services to currently unserved areas. We seek comment on the use of this application process to ensure compliance with our eligibility requirements.

1. ETC Designation

47. All USF recipients must be designated as ETCs by the relevant state (or by the Commission)⁵² before receiving high-cost support pursuant to Sections 214 and 254 of the Act.⁵³ Therefore, we propose to require that applicants for Mobility Fund support be designated as wireless ETCs covering the relevant geographic area prior to participating in a Mobility Fund auction. We seek comment on this proposal.

⁵² Some states have determined they have no jurisdiction over a wireless ETC designation request; in those cases, an ETC petition would be filed with the Commission.

⁵³ Section 254(e) of the Act provides that only ETCs designated under Section 214(e) shall be eligible to receive federal universal service support. 47 U.S.C. §§ 214(e), 254(e).

48. Alternatively, we seek comment on allowing entities that have applied for designation as ETCs in the relevant area to participate in a Mobility Fund auction.⁵⁴ Commenting parties should discuss whether the potential gain by allowing a larger pool of applicants offsets any potential abuse and delay that could result if a non-ETC were to bid and win the auction, but then be deemed ineligible for support.

49. In addition, we seek comment on the ETC designation requirements of Section 214(e). For example, ETCs must offer supported services “throughout the service area for which the designation is received.”⁵⁵ The statute also provides that when states handle the ETC designation, the states also designate the service areas.⁵⁶ Section 214 permits this Commission, with respect to interstate services, to designate ETCs and service areas “if no common carrier will provide the services that are supported by Federal universal service support mechanisms under section 254(c) to an unserved community or any portion thereof that requests such service.”⁵⁷ The statute also provides that in states where the state commission lacks jurisdiction over the carrier seeking ETC status, which is sometimes the case for wireless carriers, this Commission designates the ETC and the service area.⁵⁸ How can the Commission best interpret these and all the interrelated requirements of Section 214(e) to achieve the purposes of the Mobility Fund?

2. Access to Spectrum to Provide Required Services

50. In order to participate in a Mobility Fund auction and receive support, we propose that an entity be required to hold, or otherwise have access to, a Commission authorization to provide service in a frequency band that can support 3G or better services. We seek comment on both the access to, and the type of, spectrum required for Mobility Fund eligibility.

51. As an initial matter, we propose that entities currently licensed to operate in identified unserved blocks should be deemed to meet this requirement. We also seek comment on whether entities other than current licensees should be eligible to participate if they have either applied for a Commission license or have entered into an agreement to acquire a license through an assignment or transfer of control. Therefore, we seek comment on whether a binding agreement to acquire the necessary authorization to use spectrum should be sufficient for Mobility Fund eligibility.

52. We also seek comment on using leased spectrum to provide the service that would meet the parameters of the Mobility Fund.⁵⁹ Commenters supporting Mobility Fund eligibility for entities using leased spectrum should indicate whether we should impose requirements regarding the terms of

⁵⁴ Pursuant to 47 U.S.C. § 214(e)(1) and 47 C.F.R. § 54.101(b), an ETC is obligated to provide all of the supported services defined in 47 C.F.R. § 54.101(a) throughout the area for which it has been designated an ETC. Therefore, an ETC must be designated (or have applied for designation) with respect to an area that includes area(s) on which it wishes to receive Mobility Fund support. Moreover, a recipient of Mobility Fund support will remain obligated to provide supported services throughout the area for which it is designated an ETC if that area is larger than the areas for which it receives Mobility Fund support.

⁵⁵ 47 U.S.C. § 214(e)(1). “Service area” is defined in 47 U.S.C. § 214(e)(5).

⁵⁶ 47 U.S.C. § 214(e)(2).

⁵⁷ 47 U.S.C. § 214(e)(3).

⁵⁸ 47 U.S.C. § 214(e)(6).

⁵⁹ In 2003, as part of its secondary market policies, the Commission adopted rules to permit mobile wireless licensees to lease all or a portion of their spectrum usage rights for any length of time within the license term, and over any geographic area encompassed by the license. In the Matter of Promoting Efficient Use of Spectrum Through Elimination of Barriers to the Development of Secondary Markets, WT Docket No. 00-230, *Report and Order and Further Notice of Proposed Rulemaking*, 18 FCC Rcd 24,817 (2003), *Second Report and Order, Order on Reconsideration, and Second Further Notice of Proposed Rulemaking*, 19 FCC Rcd 17,503 (2004).

spectrum leasing arrangements that will confer eligibility, such as the minimum duration of the arrangement, the amount of spectrum, etc. Moreover, we ask whether the entity must currently be leasing the spectrum at the time of the Mobility Fund's short-form or long-form application deadline or whether a signed agreement is sufficient.

53. We propose further that entities seeking to receive support from the Mobility Fund have access to spectrum (and sufficient bandwidth) capable of supporting the required services, such as spectrum for use in Advanced Wireless Services, the 700 MHz Band, Broadband Radio Services ("BRS"), broadband PCS or cellular bands. Should we limit eligibility based on access to specific spectrum suitable for providing the required services? If so, what spectrum should we consider appropriate? Do the technical rules and configuration for Specialized Mobile Radio ("SMR") frequencies permit 3G service? We also seek comment on whether, with or without regard to requiring access to particular frequencies, we should require that parties seeking support have access to a minimum amount of bandwidth and whether only paired blocks of bandwidth should be deemed sufficient.

3. Certification of Financial and Technical Capability

54. We also propose that each party seeking to receive support from the Mobility Fund be required to certify that it is financially and technically capable of providing 3G or better service within the specified timeframe in the geographic areas for which it seeks support. We seek comment on how best to determine if an entity has sufficient resources to satisfy the Mobility Fund obligations. We likewise seek comment on certification regarding an entity's technical capacity. Do we need to be specific as to the minimum showing required to make the certification? Or can we rely on our post-auction review and performance requirements?

4. Other Qualifications

55. In addition to the three minimum qualifications described above (ETC designation, access to spectrum for 3G or better services, and certifications regarding financial and technical capabilities), we seek comment on other eligibility requirements for entities seeking to receive support from the Mobility Fund. Parties providing suggestions should be specific and explain how the eligibility requirements would serve the ultimate goals of the Mobility Fund. At the same time that we establish minimum qualifications consistent with the goals of the Mobility Fund, are there ways the Commission can encourage participation by the widest possible range of qualified parties? For example, are there any steps the Commission should take to encourage smaller eligible parties to participate in the bidding for support?

C. Reverse Auction Mechanism

56. At this stage in the development of the Mobility Fund, we propose rules for and seek comment on certain auction design elements that will establish a general framework for the proposed reverse auction mechanism. Accordingly, as detailed in Appendix A, we propose rules that will provide the Commission, the Wireless Bureau, and the Wireline Competition Bureau ("Wireline Bureau") with some flexibility to choose among various methods of conducting the bidding and procedures to use during the bidding.⁶⁰ These rules are generally modeled on our rules that govern the design and conduct of our spectrum license auctions.⁶¹

57. While the rules we propose below establish the framework for conducting a Mobility Fund auction, they do not necessarily by themselves establish the specific detailed procedures that will govern any auction process. We envision that the Commission will develop and provide notice to

⁶⁰ See Appendix A, *infra*.

⁶¹ Cf., 47 C.F.R. Part 1, Subpart Q.

potential bidders of detailed auction procedures prior to conducting a Mobility Fund auction. This will promote the use of specific procedures for an auction that take into account the particular program requirements and auction rules established in this proceeding. Specifically, we propose that, after establishing program and auction rules for the Mobility Fund in this proceeding, the Commission release a Public Notice announcing an auction date, identifying areas eligible for support through the auction, and seeking comment on specific detailed auction procedures to be used, consistent with those rules. We further propose that the Commission release a subsequent Public Notice specifying the auction procedures, including dates, deadlines, and other details of the application and bidding process. Consistent with our existing practice for spectrum auctions, we delegate authority jointly to the Wireless and Wireline Bureaus to establish as outlined here, through public notices, the necessary detailed auction procedures prior to a Mobility Fund auction, and to take all other actions needed to conduct any such auction. We seek comment on this proposal.

1. Basic Auction Design

58. A reverse auction, in which potential providers or sellers of a defined service or other benefit compete to provide it at the lowest price, can be a relatively quick, simple, and transparent method of selecting parties that will provide a benefit at the lowest price and of setting the price those parties should be paid. Here, we propose general rules for a Mobility Fund reverse auction as outlined above, including some other aspects of the auction design and process that must be considered before actually conducting an auction. As a threshold matter, although there are a number of formats that could be used for reverse auctions, including both multiple-round and single-round formats, we propose to use a single-round reverse auction to award Mobility Fund support. We propose a single-round auction because it is simple and because we expect bidders for Mobility Fund support to be well acquainted with the costs associated with providing access to advanced mobile wireless services in the areas they propose to cover, and to bid accordingly.

2. Application Process

59. As noted above, we propose to use a two-stage application process similar to the one we use in spectrum license auctions.⁶² Under this proposal, we would require a pre-auction “short-form” application from entities interested in participating in a Mobility Fund auction. After the auction, we would conduct a more extensive review of the winning bidders’ qualifications through “long-form” applications. We envision that both applications would be filed electronically, in a process similar to that used for spectrum license auctions. Here we seek comment on the specifics of the “short-form” application for a Mobility Fund auction.

60. We propose that, in the short-form application, potential bidders provide basic ownership information and certify as to their compliance with the eligibility requirements for obtaining Mobility Fund support. Specifically, we propose that an applicant would need to provide information about its ownership similar to the Part 1 competitive bidding ownership rule for spectrum auctions.⁶³ This information will establish the identity of applicants and provide information that will aid in ensuring compliance with and enforcement of Mobility Fund auction and program rules. Also, a potential bidder would need to certify its qualifications to receive Mobility Fund support, including providing its ETC designation status and information regarding its access to adequate and appropriate spectrum.⁶⁴ Finally,

⁶² See Section III.B “Eligibility for Mobility Fund” *supra*.

⁶³ 47 C.F.R. § 1.2112(a) (generally requiring an auction or license applicant to provide the real party or parties in interest, any entity holding a direct or indirect 10 percent or greater interest in the applicant, and any FCC regulated entity in which the applicant holds a 10 percent or greater interest).

⁶⁴ See Section III.B “Eligibility for Mobility Fund” *supra*.

we propose that applicants be required to certify that they have and will comply with all rules for Mobility Fund competitive bidding. We seek comment on these proposed short-form application requirements.

61. In addition, we seek comment on whether we should require applicants to identify in their short-form applications the specific census tracts with unserved blocks on which they may wish to bid and provide service. As in our spectrum auctions, we would not necessarily require a bid on each census tract selected in an applicant's short-form application. However, the availability of this information could be helpful in ensuring compliance with our auction rules. We seek comment on this and on any other information that we should require of applicants in the pre-auction stage that would help ensure a quick and reliable application process.⁶⁵

62. We propose that applications to participate in a Mobility Fund auction should be subject to review for completeness and compliance with our rules, and envision a process similar to that used in spectrum license auctions. Specifically, after the application deadline, Commission staff would review the short-form applications, and once review is complete, the Commission would release a public notice indicating which short-form applications are deemed acceptable and which are deemed incomplete. Applicants whose short-form applications were deemed incomplete would be given a limited opportunity to cure defects and to resubmit correct applications.⁶⁶ As with spectrum license auctions, applicants would only be able to make minor modifications to their short-form applications.⁶⁷ Major amendments would make the applicant ineligible to bid.⁶⁸ Once the Commission staff reviews the resubmitted applications, the Commission would release a second public notice designating the applicants that have qualified to participate in the Mobility Fund auction. We seek comment on adopting this application process in order to qualify entities to participate in a Mobility Fund auction.

3. Bidding Process

63. As noted, we propose to conduct a single-round reverse auction to identify those applicants that will receive Mobility Fund support and the amount of support they will receive, subject to post-auction processing requirements applicable to winning bidders. In this section, we seek comment on aspects of the bidding process for any Mobility Fund auction, so that potential bidders will understand how bids may be submitted, what bids will be acceptable, and how the auction mechanism will determine winning bidders.

64. Based on our proposal above to award support to bidders that will deploy service in unserved census blocks at the least per-unit cost to the Mobility Fund, we propose that bids for Mobility Fund support would state the dollar amount of support sought per each unit associated with the unserved area(s) in those census tracts covered by the specific bid submitted. In addition, based on our proposal to award support to only one provider per area, we propose that a Mobility Fund auction would select at most one winning bidder per census tract. We propose that after bidding closes, in order to select winning bidders, the auction mechanism will rank bids based on the per-unit bids from lowest to highest and calculate the running sum represented by those bids and the number of units in the unserved areas covered

⁶⁵ We note that we propose below that the Commission have the discretion to determine how much, if any, information regarding Mobility Fund short-form applications should be made public.

⁶⁶ *Cf.* 47 C.F.R. § 1.2105(b)(2).

⁶⁷ *Id.* Major amendments would include, for example, changes in ownership of the applicant that would constitute an assignment or transfer of control.

⁶⁸ In addition, applicants who fail to correct defects in their applications in a timely manner as specified by public notice would have their applications dismissed with no opportunity for resubmission. *Cf.* 47 C.F.R. § 1.2105(b)(3).

by those bids.⁶⁹ We also propose that if there are any identical bids – in the same per-unit amounts to cover the same tract or tracts, submitted by different bidders – that only one such bid, chosen randomly, be considered in the ranking.

65. Under these proposals, the auction would identify winning bidders starting with the bidder making the lowest per-unit bid and continue to the bidders with the next lowest per-unit bids in turn, provided that support had not already been assigned for that census tract, so long as the running sum based on the units in the identified unserved areas covered by the bids does not exceed the available monies.

66. *Maximum bids and reserve prices.* We propose a rule to provide the Commission with discretion to establish maximum acceptable per-unit bid amounts for a Mobility Fund auction. We also propose that the Commission may, prior to the auction, establish reserve amounts, separate and apart from any maximum opening bids, and may elect whether or not to disclose those reserves.

67. *Aggregating service areas and package bidding.* We propose a rule to provide generally that the Commission shall have discretion to establish bidding procedures for any Mobility Fund auction that permit bidders to submit bids on packages of tracts, so that their bids may take into account scale and other essential efficiencies that tract-by-tract bidding may not permit.⁷⁰

68. We seek comment generally on the use of package bidding. We propose that specific procedures for package bidding be among those determined as part of the process of establishing the detailed procedures for a Mobility Fund auction. We expect that proposals for such procedures would consider how to implement package bidding consistent with our proposal to award support to at most one provider in a census tract, without allowing geographic overlaps among packages to disqualify desirable bids. For this purpose, proposals might include limited package bidding, e.g., permitting only predefined non-overlapping packages, permitting bidders to submit package bids on geographically adjacent census tracts, and/or the possibility of requiring that bidders submitting package bids also submit separate bids on the component tracts.

69. *Refinements to the selection mechanism to address limited available funds.* As proposed above, the auction would identify winning bidders so long as the running sum of support represented by the winning bids does not exceed the monies to be made available in a Mobility Fund auction. However, there would likely be monies remaining after identifying the last lowest per-unit bid that does not exceed the funds available. We propose that the Commission's rules should provide it with discretion to establish procedures in the pre-auction process by which to identify winning bidder(s) for such remaining funds, e.g., by continuing to consider bids in order of per-unit bid amount while skipping bids that would require more support than is available, or by not identifying winning bidder(s) for the remaining funds and offering such funds in a subsequent auction. In exercising this discretion, the Commission must balance the advantages of assigning Mobility Fund support quickly and transparently with any disadvantages from supporting less cost-effective per-unit bids.

70. We also propose that, in the pre-auction process, the Commission determine procedures to address a situation where there are two or more bids for the same per-unit amount but for different areas ("tied bids") and remaining funds are insufficient to satisfy all of the tied bids. Specifically, we propose a rule that would give the Commission the discretion to identify winning bidders among such tied

⁶⁹ We note that this process may be subject to any rules we may adopt regarding distribution of awards to particular states, as discussed above.

⁷⁰ If a bidder were awarded support based on a package bid, it would still be required to meet the performance requirements for each census tract in the package. For example, it would have to provide access to a specified percentage of the units in each census tract if the Commission were to establish such a requirement.

bids by awarding support to that combination of tied bids that would most nearly exhaust the available funds, by ranking the tied bids to establish an order in which they would be awarded based on remaining available funds, or by declining to select winning bidder(s) for the remaining funds and offering such funds in a subsequent auction.

71. We seek comment on these proposals for developing procedures to address the possibility that funds will remain after the auction has identified the last lowest per-unit bid that does not exceed the funds available through the auction. We ask commenters to address the relative advantages of any suggested approaches and on other options that may later be considered when the Commission develops specific auction procedures for a Mobility Fund auction.

72. *Withdrawn bids.* The Commission has discretion, in developing procedures for its spectrum license auctions, to provide bidders limited ability to withdraw provisionally winning bids before the close of an auction. While here we propose that the Wireless and Wireline Bureaus be delegated authority to determine any such procedures in the pre-auction process, we would not expect that the Bureaus would consider permitting any bids to be withdrawn or removed from consideration after the close of bidding in a single-round Mobility Fund auction.

73. In spectrum license auctions, we permit bid withdrawals in certain circumstances so that bidders can better manage their license aggregation strategies. We do not believe that aggregation issues are of comparable importance under the Mobility Fund, which targets support to particular hard-to-reach areas. Further, we believe that permitting bids to be withdrawn after the mechanism has selected winning bidders would unduly disrupt the prompt and smooth distribution of support.

74. We expect that bidders will consider carefully expected costs and the characteristics of the geographic areas they propose to serve if offered Mobility Fund support and bid accordingly, so that if offered support, they can proceed expeditiously to file their long forms and comply with post-auction procedures.

4. Information and Competition

75. In the interests of fairness and maximizing competition in the auction process, we propose to prohibit applicants competing for support in the auction from communicating with one another regarding the substance of their bids or bidding strategies.⁷¹ Information available in short-form applications or in the auction process itself might also be used to attempt to reduce competition. Accordingly, for spectrum auctions, the Commission adopted rules providing it with discretion to limit public disclosure of auction-related information, for example by keeping non-public during the auction process certain information from applications and/or the bidding.⁷² We propose to adopt similar rules for a Mobility Fund reverse auction and seek comment on this proposal.

5. Auction Cancellation

76. As with the Commission's spectrum license auctions, we propose that the Commission's rules provide it with the discretion to delay, suspend, or cancel bidding before or after a reverse auction begins under a variety of circumstances, including natural disasters, technical failures, administrative necessity, or any other reason that affects the fair and efficient conduct of the bidding.⁷³ We seek comment on this proposal.

⁷¹ Cf. 47 C.F.R. § 1.2105(c).

⁷² Cf. 47 C.F.R. § 1.2104(h).

⁷³ Cf. 47 C.F.R. § 1.2104(i).

D. Post-Auction Process, Administration, Management, and Oversight of the Mobility Fund

1. Administration of the Mobility Fund

77. The Universal Service Administrative Company (“USAC”), a subsidiary of the National Exchange Carrier Association (“NECA”),⁷⁴ is the private not-for-profit corporation created to serve as the Administrator of the USF under the Commission’s direction.⁷⁵ The Commission appointed USAC the permanent Administrator of all of the federal universal service support mechanisms.⁷⁶ USAC administers the USF in accordance with the Commission’s rules and orders. The Commission provides USAC with oral and written guidance, as well as regulation through its rulemaking process.⁷⁷ Because the Mobility Fund will be a part of the USF high cost support program, we propose to direct USAC to administer the Mobility Fund in accordance with the applicable terms of its current appointment as administrator, and subject to all existing Commission rules and orders applicable to the USF Administrator. We seek comment on whether there are any specific rules or orders currently applicable to USAC’s administration of the USF that should not apply specifically to USAC’s administration of the Mobility Fund, and whether there are new or different requirements we should apply to USAC’s administration of the Mobility Fund.

78. In 2008, the Commission entered into a Memorandum of Understanding (“MOU”) with USAC to facilitate efficient management and oversight of the Commission’s federal universal service program.⁷⁸ If the Commission establishes a Mobility Fund, we anticipate that Commission staff would work with USAC outside the context of this rule making proceeding to revise the MOU as necessary for efficient administration of the Mobility Fund. We nevertheless solicit input from interested parties on whether there are specific aspects of the MOU that we should consider revising based on the specific purpose and goals of the Mobility Fund. For example, under the MOU, the Commission’s Wireline Bureau is the USF Administrator’s primary point of contact regarding USF policy questions, including without limitation, questions regarding the applicability of the Commission’s USF rules, orders, and directives, unless otherwise specified in such requirements.⁷⁹ Because the Mobility Fund would be

⁷⁴ NECA is an association of incumbent local exchange carriers established by the Commission to administer interstate access tariffs for companies that do not file separate tariffs and to collect and distribute access charge revenues for those companies. See 47 C.F.R. §§ 69.601, 69.603. The NECA Board of Directors is “prohibited from participating in the functions of the [universal service fund] Administrator.” 47 C.F.R. § 54.703(a).

⁷⁵ See Changes to the Board of Directors of the National Exchange Carrier Association, *Third Report and Order* in CC Docket No. 97-21, *Fourth Order on Reconsideration* in CC Docket No. 97-21 and *Eighth Order on Reconsideration* in CC Docket No. 96-45, 13 FCC Rcd 25,058, 25,063-66 ¶¶ 10-14 (1998); 47 C.F.R. § 54.701(a).

⁷⁶ USAC is responsible for performing numerous functions including, but not limited to, billing USF contributors, collecting USF contributions, disbursing funds, recovering improperly disbursed funds, processing appeals of funding decisions, submitting periodic reports to the Commission, maintaining accounting records, conducting audits of contributors and beneficiaries, and providing outreach to interested parties. See 47 C.F.R. §§ 54.702(b)-(m), 54.711, 54.715.

⁷⁷ See, e.g., Memorandum of Understanding Between the Federal Communications Commission and the Universal Service Administrative Company (Sept. 9, 2008) (*2008 FCC-USAC MOU*), available at <http://www.fcc.gov/omd/usac-mou.pdf>.

⁷⁸ See generally *2008 FCC-USAC MOU*.

⁷⁹ *2008 FCC-USAC MOU* at paragraph III.B.3. USAC engages in frequent consultations with the Commission. Currently, the Telecommunications Access Policy Division of the Wireline Bureau works with USAC to implement administration of the USF. Personnel from other Commission bureaus and offices such as the Office of the (continued....)

established to distribute support for the deployment of terrestrial mobile wireless networks providing 3G service, we seek comment on whether it would be appropriate to add the Wireless Bureau as a point of contact for the USF Administrator for policy questions pertaining to the Mobility Fund.

2. Post-Auction Application Process

79. As detailed above, we propose a two-stage application process. An applicant for Mobility Fund support would file short-form application to participate in bidding, and the information on that application would be reviewed as part of the Commission's initial screening process to determine the applicant's eligibility for support based on its ETC status and its other qualifications under the Mobility Fund auction rules. After the conclusion of the auction, winning bidders would file "long-form" applications to qualify for and receive Mobility Fund support. Those applications would be subject to an in-depth review of the applicants' eligibility and qualifications to receive USF support. We seek comment here on each step of the post-auction application process described below. To the extent a commenter disagrees with a particular aspect of the proposed process, we ask them to identify that with specificity and propose an alternative.

a. Post-auction Application

80. We propose that, after bidding has ended, the Commission will identify and notify the winning bidders and declare the bidding closed. Unless otherwise specified by public notice, within 10 business days after being notified that it is a winning bidder for Mobility Fund support, a winning bidder would be required to submit a long-form application pursuant to the program requirements governing the Mobility Fund. We seek comment on the specific information and showings that should be required of winning bidders on the long-form application before they can be certified to receive support from the Mobility Fund and before actual disbursements from the Mobility Fund can be made to them. We propose that a winning bidder would be required to provide detailed information showing that it is legally, technically and financially qualified to receive support from the Mobility Fund. We also propose that, if we were to adopt a rule allowing an applicant to participate in the auction while its ETC designation status is pending, the applicant would be required in its long-form application to demonstrate its ETC status by, for example, providing a copy of its ETC designation order from the relevant state PUC. We seek comment on these proposals and on the specific information that winning bidders should be required to provide to make the required showings.

81. We also seek comment on the procedures that we should apply to a winning bidder that fails to submit a long-form application by the established deadline. Imposition of some deterrent measure, in addition to dismissal of the late-filed application, could deter auction participants from submitting insincere bids and serve as an incentive for winning bidders to timely submit their long-form applications, enabling prompt application review and allowing expeditious distribution of support. With respect to the disposition of the Mobility Fund support for which a winning bidder does not timely file a long-form application, we propose that the funds that would have been provided to such an applicant be offered in a subsequent auction. We seek comment on this proposal.

b. Ownership Disclosure

82. We discuss above a proposed requirement for auction participants to disclose certain ownership information as an aid to bidders by providing them with information about their auction competitors and alerting them to the entities that are subject to our rules concerning prohibited communications. We propose that in the post-auction application phase, an applicant would also be required to provide additional detailed information about its ownership and control. We seek comment on

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Managing Director ("OMD"), the Enforcement Bureau, and the Office of the Inspector General ("OIG") also assist with managing and overseeing the USF and USAC.

what ownership information should be required of applicants for Mobility Fund support. Given that wireless providers often create subsidiaries or related entities for specific licenses or other purposes, detailed ownership information may be necessary to ensure that applicants claiming ETC status in fact qualify for such status. In addition to providing information on an applicant's officers and directors, should we require disclosure of an applicant's controlling interests, that is, those individuals and entities with either *de jure* or *de facto* control of the applicant? Applicants for authorizations to provide wireless services are required to disclose ownership interests in the applicant of ten percent or more.⁸⁰ What threshold level of ownership interest in an applicant for Mobility Fund support should be required to be reported on the applicant's long-form application?

83. We also seek comment on the extent to which we can minimize the reporting burden on winning bidders by allowing them to use ownership information stored in existing Commission databases and either update the ownership information in the database or certify that there have been no changes in the ownership information since it was last submitted to the Commission.

c. Project Construction

84. We seek comment on the level of information an applicant for Mobility Fund support should be required to provide regarding the network it will deploy with that support. We propose that an applicant be required to include in its long-form application a detailed project description that describes the network, identifies the proposed technology, demonstrates that the project is technically feasible, and describes each specific development phase of the project (*e.g.*, network design phase, construction period, deployment and maintenance period). To ensure that projects proceed to completion, we propose that a participant be required to submit a project schedule that identifies the following project milestones: start and end date for network design; start and end date for drafting and posting requests for proposal ("RFPs"); start and end date for selecting vendors and negotiating contracts; start date for commencing construction and end date for completing construction. We also propose that a participant's project schedule identify the dates by which it will meet applicable requirements to receive the installments of Mobility Fund support for which it subsequently qualifies.

d. Guarantee of Performance

85. We also seek comment on whether a winning bidder should be required to post financial security as a condition to receiving Mobility Fund support to ensure that it has committed sufficient financial resources to meeting the program obligations associated with such support under the Commission's rules. In particular, we seek comment on whether all winning bidders should be required to obtain an irrevocable standby letter of credit ("LOC") no later than the date on which their long-form application is submitted to the Commission. We also seek comment on whether alternatively, only certain applicants that do not meet specified criteria should be subject to this requirement, and if so, what those criteria should be. For example, should we establish criteria, based on bond rating, market capitalization, or debt/equity ratios (combined with minimum levels of available capital) that, if not met, would make an LOC necessary? Would such a requirement unnecessarily preclude providers that otherwise might be able to satisfy the obligations of the Mobility Fund from seeking to participate?

86. We seek comment on how to determine the amount of the LOC necessary to ensure uninterrupted construction of a network, as well as the length of time that the LOC should remain in place. For example, the amount of the LOC could be determined on the basis of an estimated annual budget that could accompany the build-out schedule required as part of the long-form applications, or we could simply require a specific dollar figure for the LOC in an amount that would ensure that construction could proceed for a given amount of time. Should the amount of an initial LOC, or a subsequent LOC,

⁸⁰ See 47 C.F.R. § 1.2112(a).

also ensure the continuing maintenance and operation of the network? Under what circumstances should the participant be required to replenish the LOC?

87. We also seek comment on what events would constitute a default by the recipient of Mobility Fund support that would allow a draw on the entire remaining amount of the LOC. Further, in the event of bankruptcy, the LOC should be insulated from claims other than the draws authorized for the construction and operation of the network. We seek comment on provisions we might adopt to provide safeguards to this effect.⁸¹

88. As an alternative to an LOC, we seek comment on whether we should require a winning bidder to guarantee completion of construction by obtaining a performance bond covering the cost of network construction and operation. Such a requirement would be similar to that which the Commission has imposed as a condition on satellite licenses.⁸² We also seek comment on the types of requirements that bond issuers might impose and whether such requirements would be so unduly burdensome as to restrict the number of carriers that might be able to bid for Mobility Fund support. We also seek comment on the relative merits of performance bonds and LOCs and the extent to which performance bonds, in the event of the bankruptcy of the recipient of Mobility Fund support, might frustrate our goal of ensuring timely build-out of the network. We also seek comment on whether there are other protections that the Commission should reasonably seek to ascertain the financial viability of the winning bidder, and ensure construction of the network and its subsequent operation. For instance, are there ways that the Commission can facilitate timely build-out of the network in areas where recipients of Mobility Fund support enter bankruptcy before completing construction? Are there steps the Commission could take to facilitate completion of the network by another service provider?

e. Other Funding Restrictions

89. We seek comment on whether participants who receive support from the Mobility Fund should be barred from receiving funds for the same activity under any other federal program, including, for example, federal grants, awards, or loans.

f. Certifications

90. Finally, we seek comment on the certifications that should be required of a winning bidder to receive Mobility Fund support. We propose that prior to receiving Mobility Fund support, an applicant be required to certify to the availability of funds for all project costs that exceed the amount of support to be received from the Mobility Fund and certify that they will comply with all program requirements. Should we also require certifications regarding the provision of service at rates reasonably comparable to those offered in urban areas? We have sought comment on the definition of these terms for these purposes in our discussion of performance requirements above.

⁸¹ For example, we could require as a condition of receiving Mobility Fund support, that a winning bidder first provide the Commission with a legal opinion letter that would state, subject only to customary assumptions, limitations and qualifications, that in a proceeding under Title 11 of the United States Code, 11 U.S.C. Section 101 *et seq.* (the “Bankruptcy Code”), in which the winning bidder is the debtor, the bankruptcy court would not treat the LOC or proceeds of the LOC as property of the winning bidder’s bankruptcy estate (or the bankruptcy estate of any other bidder-related entity requesting the issuance of the LOC) under Section 541 of the Bankruptcy Code.

⁸² See, e.g., 47 C.F.R. §§ 25.137, 25.165.

3. Disbursing Support

a. Support Payments

91. We seek comment on the following proposal to provide Mobility fund support in installments, and on whether this proposal strikes the appropriate balance between advancing funds to expand service and assuring that service is expanded.

92. We propose that Mobility Fund support be provided in three installments. Each party receiving support would be eligible for 1/3 of the amount of support associated with any specific census tract once its application for support is granted. A party would receive the second third of its total support when it files a report demonstrating coverage of 50 percent of the population associated with the census block(s) deemed unserved that are within that census tract.⁸³ A party would receive the final third of the support upon filing a report that demonstrates coverage of 100 percent of the resident population in the unserved census block(s) within the census tract. Alternatively, if we establish a coverage requirement of less than 100 percent, we propose that a party may file a report that certifies that, although less than 100 percent of the originally unserved resident population is now covered, at least the required percent of that population is covered and no further coverage expansion is intended. In that case, the party's final payment would be the difference between the total amount of support based on the population of unserved census blocks actually covered, *i.e.*, a figure between the required percentage and 100 percent of the resident population, and any support previously received. We seek comment on this proposal.

93. Section 254(e) requires that a carrier shall use "support only for the provision, maintenance, and upgrading of facilities and services for which the support is intended."⁸⁴ How should the Commission ensure that support from the Mobility Fund is used for the purposes in which it was intended as required by Section 254(e)? We seek comment on requiring additional information from the recipients concerning how the funds were used and specifically what information should be submitted.

b. Support Liabilities

94. We seek comment on the extent to which parties qualifying to receive support should be liable in the event that they are unable to expand service pursuant to the goals of the Mobility Fund. As discussed above, we propose that applicants qualifying for support be able to receive initial payments in advance of providing service in order to finance the expansion of service. Parties receiving such support should be liable to repay the support if they fail to provide the intended service. Should they be subject to additional liabilities and/or security requirements (such as letters of credit or performance bonds) in order to provide them with proper incentives to perform and to protect the Mobility Fund in case they fail to perform as required? Should the Commission require affiliates, such as parent corporations or entities within the same larger enterprise, to be responsible if the recipient fails to meet its obligations? Is there a level of service short of the full service sought that ought to offset the supported parties' liabilities? Are any special provisions needed in our rules to address the possibility that a party qualifying for support from the Mobility Fund might enter bankruptcy prior to providing all the coverage necessary to receive support? Are there measures the Commission can take to limit the possibility that Mobility Fund support becomes an asset in such party's bankruptcy estate for an extended period of time instead of being used promptly to further the goals of the Mobility Fund? We seek comment on these issues.

⁸³ Because we propose below to delegate jointly to the Wireless Bureau and the Wireline Bureau the authority to determine the method and procedures by which parties submit documents and information required to receive Mobility Fund support, we do not propose here specific filing procedures for these reports.

⁸⁴ 47 U.S.C. § 254(e).

4. Audits and Record Retention

95. We seek comment on the rules that the Commission should establish to impose certain internal control requirements on program participants to facilitate program oversight. The Commission has taken action in previous proceedings to detect and deter waste, fraud, and abuse of the USF.⁸⁵ In 2007, the Commission adopted rules to address many of the problems that had been previously identified with the USF program.⁸⁶

a. Audits

96. Audits are an important tool for the Commission and the USF Administrator to ensure program integrity and to detect and deter waste, fraud, and abuse. Commission rules authorize the Administrator to conduct audits of contributors to the universal service support mechanisms.⁸⁷ The 2008 FCC-USAC MOU requires the USF Administrator to conduct audits, including audits of USF beneficiaries, in accordance with generally accepted government auditing standards, as required by section 54.702(n) of our rules.⁸⁸ USAC's audit program consists of audits by USAC's internal audit division staff as well as audits by independent auditors under contract with USAC.⁸⁹

97. We propose that Mobility Fund beneficiaries, like beneficiaries of other USF programs, be subject to assessments as required under the Improper Payments Information Act of 2002 and random compliance audits to ensure compliance with program rules and orders. We seek comment on whether random compliance audits of Mobility Fund beneficiaries would provide adequate audit oversight of that program. Are there other or additional oversight measures, including scheduled compliance audits, that would be appropriate and effective in detecting and deterring waste, fraud, and abuse?

b. Record Retention

98. In the *Universal Service Fund Oversight Order*, the Commission adopted new rules establishing rigorous document retention requirements for program participants. The Commission's new rules also create additional penalties for bad actors – specifically, the Commission can now debar from continued participation in all USF programs, any party that defrauds any of the four USF disbursement

⁸⁵ See, e.g., *Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, *Fifth Report and Order and Order*, 19 FCC Rcd 15,808 (2004); *Federal-State Joint Board on Universal Service*, CC Docket Nos. 96-45, 97-21, 02-6, *Order on Reconsideration and Fourth Report and Order*, 19 FCC Rcd 15,252 (2004); *Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, *Second Report and Order and Further Notice of Proposed Rulemaking*, 18 FCC Rcd 9202 (2003).

⁸⁶ See *Comprehensive Review of the Universal Service Fund Management, Administration, and Oversight*, WC Docket No. 05-195, *Report and Order*, 22 FCC Rcd 16,372, 16,383-85 ¶¶ 22-27 (2007) (*Universal Service Fund Oversight Order*).

⁸⁷ 47 C.F.R. § 54.707.

⁸⁸ 47 C.F.R. § 54.702(n).

⁸⁹ In addition, the Commission's OIG has conducted audits of USF program beneficiaries. See Office of Inspector General, *Semiannual Report to Congress*, October 1, 2009 through March 31, 2010, at 17-20. In a February 12, 2010, letter to USAC, OMD directed USAC to separate its two audit objectives into distinct programs – one focused on Improper Payments Information Act ("IPIA") assessment and the second on auditing compliance with all four USF programs. Improper Payments Information Act of 2002, Pub.L.No. 107-300, 116 Stat. 2350 (2002). In addition to providing guidance on the implementation of the IPIA assessment program and compliance audit program, the letter informed USAC that OMD would assume responsibility for oversight of USAC's implementation of both programs. Letter from Steven Van Roekel, Managing Director, Federal Communications Commission to Scott Barash, Acting CEO, Universal Service Administrative Company, February 12, 2010, available at <http://www.fcc.gov/omd/usac-letters/2010/021210-ipia.pdf>.

programs.⁹⁰ Consistent with the rules governing the Commission's existing high-cost support program, we propose to require recipients of Mobility Fund support to retain all records that they may require to demonstrate to auditors that the support they received was consistent with the Act and the Commission's rules.⁹¹

99. We seek comment on what records should at a minimum be included in this requirement. As an initial matter, we propose that the record retention requirements apply to all agents of the recipient, and any documentation prepared for or in connection with the recipient's Mobility Fund support. We further propose that beneficiaries be required to make all such documents and records that pertain to them, contractors, and consultants working on behalf of the beneficiaries, available to the Commission's Office of Managing Director, Wireless Bureau, Wireline Bureau, OIG, and the USF Administrator, and their auditors.

100. We propose that a five-year period for record retention, consistent with the rules we adopted for those receiving other universal service high cost support, is a reasonable standard that will serve the public interest.⁹² To the extent other rules or any other law require or necessitate documents be kept for longer periods of time, we do not alter, amend, or supplant such rule or law.⁹³ High cost program recipients would be required to keep documents for such longer periods of time as required or necessary under such other rules or law and make such documents available to the Commission and USAC. We seek comment on this proposal.

5. Delegation of Authority

101. In order to implement the various requirements we adopt for applicants for and recipients of Mobility Fund support, we propose to delegate jointly to the Wireless Bureau and Wireline Bureau the authority to determine the method and procedures for applicants and recipients to submit the appropriate and relevant documents and information. This delegation of authority to both bureaus would authorize modification, as necessary, of existing FCC forms and the creation, if necessary, of new FCC forms to implement the rules we adopt in this proceeding.

IV. PROCEDURAL MATTERS

A. Filing Requirements

102. *Ex Parte Rules.* This NPRM will be treated as a "permit-but-disclose" proceeding subject to the "permit-but-disclose" requirements under section 1.1206(b) of the Commission's rules.⁹⁴ *Ex parte* presentations are permissible if disclosed in accordance with Commission rules, except during the Sunshine Agenda period when presentations, *ex parte* or otherwise, are generally prohibited. Persons making oral *ex parte* presentations are reminded that a memorandum summarizing a presentation must contain a summary of the substance of the presentation and not merely a listing of the subjects discussed.

⁹⁰ *Universal Service Fund Oversight Order*, 22 FCC Rcd at 16,387 ¶ 32. See 47 C.F.R. § 54.8.

⁹¹ See 47 C.F.R. § 54.202(e) ("All eligible telecommunications carriers shall retain all records required to demonstrate to auditors that the support received was consistent with the universal service high-cost program rules. . . This documentation must be maintained at least five years from the receipt of funding.")

⁹² Cf. the five-year limitation on imposition of forfeitures for violations of Section 220(d) of the Act. 47 C.F.R. § 1.80(c)(2).

⁹³ See, e.g., 47 C.F.R. § 32.2000.

⁹⁴ See 47 C.F.R. § 1.1206(b).

More than a one- or two-sentence description of the views and arguments presented is generally required.⁹⁵ Additional rules pertaining to oral and written presentations are set forth in Section 1.1206(b).

103. *Comments and Reply Comments.* Pursuant to sections 1.415 and 1.419 of the Commission's rules, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using: (1) the Commission's Electronic Comment Filing System (ECFS), (2) the Federal Government's eRulemaking Portal, or (3) by filing paper copies.⁹⁶

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: <http://fjallfoss.fcc.gov/ecfs2/> or the Federal eRulemaking Portal: <http://www.regulations.gov>.
- Paper Filers: Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St., SW, Room TW-A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW, Washington DC 20554.

104. *People with Disabilities:* To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (tty).

105. *Further Information:* For further information, contact Scott A. Mackoul, Auctions and Spectrum Access Division, Wireless Telecommunications Bureau at 202-418-0660.

B. Initial Regulatory Flexibility Analysis

106. As required by Section 603 of the Regulatory Flexibility Act, 5 U.S.C. § 603, the Commission has prepared an Initial Regulatory Flexibility Analysis of the possible significant economic impact on small entities of the policies and rules proposed in the NPRM. An Initial Regulatory Flexibility Analysis is included in Appendix B.

⁹⁵ *Id.*

⁹⁶ 47 C.F.R. §§ 1.415, 1.419. See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

C. Paperwork Reduction Act Analysis

107. This document contains proposed information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget to comment on the information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995, Public Law 104-13. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. § 3506(c)(4), we seek specific comment on how we might further reduce the information collection burden for small business concerns with fewer than 25 employees.

V. ORDERING CLAUSES

108. Accordingly, IT IS ORDERED, that, pursuant to Sections 4(i), 301, 303(c), 303(f), 303(r), 303(y), and 310 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 301, 303(c), 303(f), 303(r), 303(y), and 310, this Notice of Proposed Rulemaking IS ADOPTED.

109. IT IS FURTHER ORDERED, that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this Notice of Proposed Rule Making, including the Initial Regulatory Flexibility Analysis to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

APPENDIX A**Proposed Rules**

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 C.F.R. Parts 0, 1 and 54 to read as follows:

PART 0 – COMMISSION ORGANIZATION

1. The authority citation for Part 0 continues to read as follows:

AUTHORITY: Sec. 5, 48 Stat. 1068, as amended; 47 U.S.C. 155, 225, unless otherwise noted.

2. Amend Section 0.131 of Part 0 of Title 47 of the Code of Federal Regulations by adding subparagraph (q) as follows:

§ 0.131 Functions of the Bureau

* * * * *

(q) Serves as the Commission's principal policy and administrative staff resource with respect to competitive bidding to distribute universal service support for wireless telecommunications and related services through the Mobility Fund. Develops, recommends and administers policies, programs, rules and procedures concerning competitive bidding to distribute universal service support for wireless telecommunications and related services through the Mobility Fund.

* * * * *

PART 1 – PRACTICE AND PROCEDURE

3. The authority citation for Part 1 continues to read as follows:

AUTHORITY: 15 U.S.C. 79 *et seq.*; 47 U.S.C. 151, 154(j), 160, 201, 225, 303, and 309.

4. Add new Subpart AA to Part 1 of Title 47 of the Code of Federal Regulations to read as follows:

Subpart AA – Competitive Bidding for Universal Service Support Available through the Mobility Fund

§ 1.21000 Purpose

§ 1.21001 Participation in Competitive Bidding to Apply for Mobility Fund Support

§ 1.21002 Communications Prohibited During the Competitive Bidding Process

§ 1.21003 Competitive Bidding Process

§ 1.21004 Applying for Mobility Fund Support

§ 1.21000 Purpose

This subpart sets forth procedures for competitive bidding to determine the recipients of universal service support available through the Mobility Fund and the amount(s) of support that they may receive, subject to post-auction procedures established by the Commission.

§ 1.21001 Participation in Competitive Bidding to Apply for Mobility Fund Support

(a) *Public Notice of the Application Process.* When conducting competitive bidding pursuant to this subpart, the Commission shall by Public Notice announce the dates and procedures for submitting applications to participate in related competitive bidding.

(b) *Application Contents.* All parties submitting applications to participate in competitive bidding pursuant to this subpart must provide the following information in their application in a form acceptable to the Commission.

(1) The identity of the applicant, *i.e.*, the party seeking Mobility Fund support, including any information that the Commission may require regarding parties that have an ownership or other interest in the applicant.

(2) The identities of up to three individuals designated to bid on behalf of the applicant.

(3) The identities of all real parties in interest to any agreements relating to the participation of the applicant in the competitive bidding.

(4) Certification that the application discloses all real parties in interest to any agreements involving the applicant's participation in the competitive bidding.

(5) Certification that the applicant, any party capable of controlling the applicant, and any related party with information regarding the applicant's planned or actual participation in the competitive bidding will not communicate any information regarding the applicant's planned or actual participation in the competitive bidding to any other party with an interest in any other applicant until after the post-auction deadline for winning bidders to submit long-form applications for Mobility Fund support, unless the Commission by Public Notice announces a different deadline.

(6) Certification that the applicant is in compliance with any and all statutory or regulatory requirements for receiving universal service support from the Mobility Fund. The Commission may elect to accept as sufficient the applicant's demonstration in its application that the applicant will be in compliance at a point in time designated by the Commission.

(7) Such additional information as the Commission may require.

(c) *Demonstration of Financial Qualification.* The Commission may require as a prerequisite to participating in competitive bidding pursuant to this subpart that applicants demonstrate their financial qualifications or commitment to provide supported services by depositing funds, posting performance bonds, or any other means the Commission considers appropriate.

(d) *Application Processing.*

(1) Commission staff shall review any application submitted during the period for submission and before the deadline for submission for completeness and compliance with the Commission's rules. No applications submitted at any other time shall be reviewed or considered.

(2) The Commission shall not permit any applicant to participate in competitive bidding pursuant to this subpart to do so if, as of the deadline for submitting applications, the application does not adequately identify the applicant or does not include required certifications.

(3) The Commission shall not permit any applicant to participate in competitive bidding pursuant to this subpart to do so if, as of the applicable deadline, the applicant has not provided any required demonstration of financial qualifications that the Commission has required.

(4) The Commission shall not permit applicants to make any major modifications to their applications after the deadline for submitting applications. The Commission shall not permit applicants to participate in the competitive bidding if their applications require major modifications to be made after deadline for submitting applications. Major modifications include but are not limited to any changes to the identity of the applicant or to the certifications required in the application.

(5) The Commission may permit applicants to make minor modifications to their applications after the deadline for submitting applications. The Commission may establish deadlines for making some or all permissible modifications to applications and may permit some or all permissible modifications to be made at any time. Minor modifications include correcting typographical errors in the application and supplying non-material information that was inadvertently omitted or was not available at the time the application was submitted.

(6) After receipt and review of the applications, the Commission shall by Public Notice identify all applicants that may participate in an auction conducted pursuant to this subpart.

§ 1.21002 Communications Prohibited During the Competitive Bidding Process

(a) *Prohibited Communications.* Each applicant, each party capable of controlling an applicant, and each party related to an applicant with information regarding an applicant's planned or actual participation in the competitive bidding is prohibited from communicating any information regarding the applicant's planned or actual participation in the competitive bidding to any other party with an interest in any other applicant to participate in the competitive bidding from the deadline for submitting applications to participate in the competitive bidding until after the post-auction deadline for winning bidders to submit long-form applications for Mobility Fund support, unless the Commission by Public Notice announces a different deadline.

(b) *Duty to Report Potentially Prohibited Communications.* Any applicant or related party receiving communications that may be prohibited under this rule shall report the receipt of such communications to the Commission.

(c) *Procedures for Reporting Potentially Prohibited Communications.* The Commission may by Public Notice establish procedures for parties to report the receipt of communications that may be prohibited under this rule.

§ 1.21003 Competitive Bidding Process

(a) *Public Notice of Competitive Bidding Procedures.* The Commission shall by Public Notice establish detailed competitive bidding procedures any time it conducts competitive bidding pursuant to this subpart.

(b) *Competitive Bidding Procedures.* The Commission may conduct competitive bidding pursuant to this subpart using any of the procedures described below.

(1) The Commission may establish procedures for limiting the public availability of information regarding applicants, applications, and bids during a period of time covering the competitive bidding process. The Commission may by Public Notice establish procedures for parties to report the receipt of non-public information regarding applicants, applications, and bids during any time the Commission has limited the public availability of the information during the competitive bidding process.

(2) The Commission may sequence or group multiple items subject to bidding, such as multiple geographic areas eligible for Mobility Fund support, and may conduct bidding either sequentially or simultaneously.

(3) The Commission may establish procedures for bidding on individual items and/or for combinations or packages of items.

(4) The Commission may establish reserve prices, either for discrete items or combinations or packages of items, which may be made public or kept non-public during a period of time covering the competitive bidding process.

(5) The Commission may prescribe the form and time for submitting bids and may require that bids be submitted remotely, by telephonic or electronic transmission, or in person.

(6) The Commission may prescribe the number of rounds during which bids may be submitted, whether one or more, and may establish procedures for determining when no more bids will be accepted.

(7) The Commission may require a minimum level of bidding activity.

(8) The Commission may establish acceptable bid amounts at the opening of and over the course of bidding.

(9) The Commission may establish procedures for comparing and ranking bids and determining the winning bidders that may become recipients of universal service support available through the Mobility Fund and the amount(s) of support that they may receive, subject to post-auction procedures established by the Commission.

(10) The Commission may permit bidders to withdraw bids and, if so, establish procedures for doing so.

(11) The Commission may delay, suspend or cancel bidding before or after bidding begins for any reason that affects the fair and efficient conduct of the bidding, including natural disasters, technical failures, administrative necessity or any other reason.

(c) *Apportioning Package Bids.* If the Commission elects to accept bids for combinations or packages of items, the Commission may provide a methodology for apportioning such bids to discrete items within the combination or package when a discrete bid on an item is required to implement any Commission rule.

(d) *Public Notice of Competitive Bidding Results.* After the conclusion of competitive bidding, the Commission shall by Public Notice identify the winning bidders that may become recipients of universal service support available through the Mobility Fund and the amount(s) of support that they may receive, subject to post-auction procedures established by the Commission.

§ 1.21004 Applying for Mobility Fund Support

Winning bidders that fail to substantially comply with the requirements for filing the post-auction long-form application by the applicable deadline shall be in default on their bids and subject to such measures as the Commission may provide, including but not limited to disqualification from future competitive bidding pursuant to this subpart.

PART 54 – UNIVERSAL SERVICE

5. The authority citation for Part 54 continues to read as follows:

AUTHORITY: 47 U.S.C. 151, 154(i), 201, 205, 254 unless otherwise noted.

6. Add new Subpart L to Part 54 of Title 47 of the Code of Federal Regulations to read as follows:

Subpart L – Mobility Fund

- § 54.1001 Mobility Fund
- § 54.1002 Geographic Areas Eligible for Support
- § 54.1003 Provider Eligibility
- § 54.1004 Application Process
- § 54.1005 Performance Requirements
- § 54.1006 Mobility Fund Disbursements
- § 54.1007 Audits

§ 54.1001 Mobility Fund.

The Commission may designate reserves accumulated in the Universal Service Fund to be made available through the Mobility Fund. The Commission may use competitive bidding, as provided in Part 1, Subpart AA, to determine the recipients of support available through the Mobility Fund and the amount(s) of support that they may receive for specific geographic areas, subject to post-auction procedures established by the Commission.

§ 54.1002 Geographic Areas Eligible for Support

- (a) Mobility Fund support may be made available for specific geographic areas identified by the Commission.
- (b) The Commission may assign relative coverage units to each identified geographic area in connection with conducting competitive bidding and disbursing support.

§ 54.1003 Provider Eligibility

- (a) A party applying for Mobility Fund support must be designated an Eligible Telecommunications Carrier for an area that includes geographic area(s) with respect to which it applies for Mobility Fund support.
- (b) A party applying for Mobility Fund support must, in a form specified by the Commission, hold or otherwise have access to a Commission authorization to provide spectrum-based services such that it is capable of satisfying performance requirements in the geographic area with respect to which it applies.

(c) A party applying for Mobility Fund support must certify that is financially, technically, and legally qualified to provide the supported mobile services.

§ 54.1004 Application Process

(a) *Application Deadline.* Unless otherwise provided by Public Notice, winning bidders for Mobility Fund support must file a long-form application for Mobility Fund support within 10 business days of the Public Notice identifying them as eligible to apply.

(b) *Application Contents.*

- (1) Identification of the party seeking the support.
- (2) Information the Commission may require to demonstrate that the applicant is legally, technically and financially qualified to receive support from the Mobility Fund, including but not limited to proof of its designation as an Eligible Telecommunications Carrier for an area that includes the area with respect to which support is requested and identification of its authorization to provide spectrum-based services in the area with respect to which support is requested.
- (3) Disclosure of all parties with a controlling interest in the applicant and any party with a greater than ten percent ownership interest in the applicant, whether held directly or indirectly.
- (4) A detailed project description that describes the network, identifies the proposed technology, demonstrates that the project is technically feasible, and describes each specific development phase of the project, *e.g.*, network design phase, construction period, deployment and maintenance period.
- (5) Certifications that the applicant has available funds for all project costs that exceed the amount of support to be received from the Mobility Fund and that the applicant will comply with all program requirements.
- (6) Any guarantee of performance that the Commission may require by Public Notice or other proceedings, including but not limited to, letters of credit, performance bonds, or demonstration of financial resources.

(c) *Application Processing.*

- (1) No application will be considered unless it has been submitted during the period specified by Public Notice. No applications submitted or demonstrations made at any other time shall be accepted or considered.
- (2) The Commission shall deny any application that, as of the submission deadline, either does not adequately identify the party seeking support or does not include required certifications.
- (3) After reviewing applications submitted, the Commission may afford an opportunity for parties to make minor modifications to amend applications or correct defects noted by the applicant, the Commission, or other parties. Minor modifications include correcting typographical errors in the application and supplying non-material information that was inadvertently omitted or was not available at the time the application was submitted.

(4) The Commission shall deny all applications to which major modifications are made after the deadline for submitting applications. Major modifications include any changes to the identity of the applicant or to the certifications required in the application.

(5) After receipt and review of the applications, the Commission shall release a Public Notice identifying all applications that have been granted and the parties that are eligible to receive Mobility Fund support.

§ 54.1005 Performance Requirements

(a) Parties receiving Mobility Fund support shall submit to the Commission annual reports for ten years after they qualify for support. The annual reports shall include:

- (1) Electronic Shapefiles site coverage plots illustrating the area reached by new services at a minimum scale of 1:240,000;
- (2) A list of relevant census blocks previously deemed unserved, with total resident population and resident population residing in areas reached by new services (based on Census Bureau data and estimates);
- (3) A report regarding the services advertised to the population in those areas;
- (4) Data received or used from drive tests analyzing network coverage for mobile services in the area for which support was received.

(b) No later than two months after a site begins providing service or two years after receiving Mobility Fund support, parties receiving the support shall submit to the Commission data from drive tests covering the area for which support was received demonstrating mobile transmissions supporting voice and data to and from the network meeting or exceeding the following:

- (1) Outdoor minimum of 200 kbps uplink and 768 kbps downlink at vehicle speeds up to 70 MPH;
- (2) Achieved with 90% coverage area probability at a sector loading of 70%.

(c) Drive tests submitted in compliance with this section shall cover all Interstate, US routes, and State routes in the area for which support was received and any other roads deemed essential for mobile service by the State Agency regulating the provision of telecommunications services in that area.

§ 54.1006 Mobility Fund Disbursements

(a) Mobility Fund support shall be disbursed to recipients in three stages, as follows:

- (1) One-third of the total possible support, if coverage were to be extended to 100 percent of the units deemed unserved in the geographic area, when a recipient's long-form application for support with respect to a geographic area is deemed approved.
- (2) One-third of the total possible support with respect to a specific geographic area when a recipient files a report demonstrating coverage of 50 percent of the units in that area previously deemed unserved.

(3) The remainder of the total possible support when a recipient files a report demonstrating coverage of 100 percent of the units in that area previously deemed unserved.

(b) If the Commission concludes for any reason that coverage of 100 percent of the units in the geographic area previously deemed unserved will not be achieved, the Commission instead may provide support based on the final total units covered in that area. In such circumstances, the final disbursement will be the difference between the total amount of support based on the final units covered in that area and any support previously received with respect to that area. Parties accepting a final disbursement for a specific geographic area based on coverage of less than 100 percent of the units in the area previously deemed unserved waive any claim for the remainder of support for which they previously were eligible with respect to that area.

§ 54.1007 Audits

(a) Parties receiving Mobility Fund support are subject to random compliance audits and other investigations to ensure compliance with program rules and orders.

(b) Parties receiving Mobility Fund support and their agents are required to retain any documentation prepared for or in connection with the recipient's Mobility Fund support for a period of not less than 5 years. All such documents shall be made available upon request to the Commission's Office of Managing Director, Wireless Telecommunications Bureau, Wireline Competition Bureau, Office of Inspector General, and the Universal Service Fund Administrator, and their auditors.

APPENDIX B

Initial Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act (“RFA”),¹ the Commission has prepared this Initial Regulatory Flexibility Analysis (“IRFA”) of the possible significant economic impact on small entities of the policies and rules proposed in this Notice of Proposed Rulemaking (“NPRM”). Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments provided on the first page of the NPRM. The Commission will send a copy of this NPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (“SBA”).² In addition, the NPRM and IRFA (or summaries thereof) will be published in the Federal Register.³

A. Need for, and Objectives of, the Proposed Rules

2. The NPRM seeks comment on creation of a new Mobility Fund within the high-cost mechanism of the federal universal service program. The purpose of this Mobility Fund is to significantly improve coverage of current-generation or better mobile voice and Internet service for consumers in areas where such coverage is currently missing, and to do so by supporting private investment. The Mobility Fund would employ a reverse-auction mechanism to make non-recurring universal service support available to service providers to cost-effectively extend mobile coverage in specified unserved areas.

3. In the three decades since the Commission issued the first cellular telephone licenses, the wireless industry has continually expanded and upgraded its networks to the point where third generation (often called “advanced” or “3G”) mobile wireless services that include both voice telecommunications service as well as e-mail and Internet access are now widely available.⁴ But mobility gaps remain a problem for residents, businesses, public institutions, travelers, and public safety first responders, particularly in rural areas. Such gaps impose significant disadvantages on those who live, work, and travel in these areas. Moreover, without existing modern wireless infrastructure, they are at risk of much-delayed access to the coming generations of wireless broadband services. For this reason, the *National Broadband Plan* recommended providing universal service support to promote the national build-out of 3G services as part of a comprehensive set of recommendations to reform the universal service program.⁵ The proposals in this NPRM build on that recommendation.

4. The Mobility Fund is one of a set of initiatives to promote deployment of broadband and mobile services in the United States.⁶ In the NPRM, we seek comment on the creation of the Mobility Fund to provide an initial infusion of funds toward solving persistent gaps in mobile services through

¹ See 5 U.S.C. § 603. The RFA, *see* 5 U.S.C. § 601 *et. seq.*, has been amended by the Contract With America Advancement Act of 1996, Pub. L. No. 104-121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

² See 5 U.S.C. § 603(a).

³ See *id.*

⁴ In the NPRM, the terms “current generation,” “3G,” and “advanced” are used interchangeably to refer to mobile wireless services that include voice telecommunications service as well as email and Internet access.

⁵ Federal Communications Commission, *Connecting America: The National Broadband Plan*, 146-48 (rel. Mar. 16, 2010) (*National Broadband Plan*).

⁶ The *National Broadband Plan* also recommended creation of the Connect America Fund to ensure that all Americans have access to high-speed Internet access at their homes.

targeted, one-time support for the build-out of current- and next-generation wireless infrastructure in areas where these services are unavailable. This proposal represents a critical step in modernizing the USF.

B. Legal Basis

5. The legal basis for the proposed rules and the NPRM is contained in Sections 4(i), 301, 303(c), 303(f), 303(r), 303(y), and 310 of the Communications Act of 1934, as amended (“Communications Act” or “Act”), 47 U.S.C. §§ 154(i), 301, 303(c), 303(f), 303(r), 303(y), and 310, and section 1.411 of the Commission’s rules, 47 C.F.R. § 1.411.

C. Description and Estimate of the Number of Small Entities To Which the Proposed Rules Will Apply

6. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted.⁷ The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.”⁸ In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act.⁹ A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.¹⁰

7. **Small Businesses.** Nationwide, there are a total of approximately 29.6 million small businesses, according to the SBA.¹¹

8. **Small Organizations.** Nationwide, as of 2002, there are approximately 1.6 million small organizations.¹² A “small organization” is generally “any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.”¹³

9. **Small Governmental Jurisdictions.** The term “small governmental jurisdiction” is defined generally as “governments of cities, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.”¹⁴ Census Bureau data for 2002 indicate that there were 87,525 local governmental jurisdictions in the United States.¹⁵ We estimate that, of this total, 84,377 entities were “small governmental jurisdictions.”¹⁶ Thus, we estimate that most governmental jurisdictions are small.

⁷ 5 U.S.C. § 603(b)(3).

⁸ 5 U.S.C. § 601(6).

⁹ 5 U.S.C. § 601(3) (incorporating by reference the definition of “small business concern” in 15 U.S.C. § 632). Pursuant to the RFA, the statutory definition of a small business applies “unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register.” 5 U.S.C. § 601(3).

¹⁰ Small Business Act, 15 U.S.C. § 632 (1996).

¹¹ See SBA, Office of Advocacy, “Frequently Asked Questions,” <http://web.sba.gov/faqs> (accessed Jan. 2009).

¹² Independent Sector, *The New Nonprofit Almanac & Desk Reference* (2002).

¹³ 5 U.S.C. § 601(4).

¹⁴ 5 U.S.C. § 601(5).

¹⁵ U.S. Census Bureau, *Statistical Abstract of the United States: 2006*, Section 8, p. 272, Table 415.

¹⁶ We assume that the villages, school districts, and special districts are small, and total 48,558. See U.S. Census Bureau, *Statistical Abstract of the United States: 2006*, section 8, p. 273, Table 417. For 2002, Census Bureau data (continued....)

10. **Wireless Telecommunications Carriers (except Satellite).** Since 2007, the Census Bureau has placed wireless firms within this new, broad, economic census category.¹⁷ Prior to that time, such firms were within the now-superseded categories of “Paging” and “Cellular and Other Wireless Telecommunications.”¹⁸ Under the present and prior categories, the SBA has deemed a wireless business to be small if it has 1,500 or fewer employees.¹⁹ Because Census Bureau data are not yet available for the new category, we will estimate small business prevalence using the prior categories and associated data. For the category of Paging, data for 2002 show that there were 807 firms that operated for the entire year.²⁰ Of this total, 804 firms had employment of 999 or fewer employees, and three firms had employment of 1,000 employees or more.²¹ For the category of Cellular and Other Wireless Telecommunications, data for 2002 show that there were 1,397 firms that operated for the entire year.²² Of this total, 1,378 firms had employment of 999 or fewer employees, and 19 firms had employment of 1,000 employees or more.²³ Thus, we estimate that the majority of wireless firms are small.

11. **Auctions.** Initially, we note that, as a general matter, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Also, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated.

12. **2.3 GHz Wireless Communications Services.** This service can be used for fixed, mobile, radiolocation, and digital audio broadcasting satellite uses. The Commission defined “small business” for the wireless communications services (“WCS”) auction as an entity with average gross revenues of \$40 million for each of the three preceding years, and a “very small business” as an entity with average gross revenues of \$15 million for each of the three preceding years.²⁴ The SBA has approved these definitions.²⁵ The Commission auctioned geographic area licenses in the WCS service. In the auction, which was conducted in 1997, there were seven bidders that won 31 licenses that qualified as very small business entities, and one bidder that won one license that qualified as a small business entity.

(Continued from previous page) —————

indicate that the total number of county, municipal, and township governments nationwide was 38,967, of which 35,819 were small. *Id.*

¹⁷ U.S. Census Bureau, 2007 NAICS Definitions, “517210 Wireless Telecommunications Categories (Except Satellite)”; <http://www.census.gov/naics/2007/def/ND517210.HTM#N517210>.

¹⁸ U.S. Census Bureau, 2002 NAICS Definitions, “517211 Paging”; <http://www.census.gov/epcd/naics02/def/NDEF517.HTM>; U.S. Census Bureau, 2002 NAICS Definitions, “517212 Cellular and Other Wireless Telecommunications”; <http://www.census.gov/epcd/naics02/def/NDEF517.HTM>.

¹⁹ 13 C.F.R. § 121.201, NAICS code 517210 (2007 NAICS). The now-superseded, pre-2007 C.F.R. citations were 13 C.F.R. § 121.201, NAICS codes 517211 and 517212 (referring to the 2002 NAICS).

²⁰ U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, “Establishment and Firm Size (Including Legal Form of Organization,” Table 5, NAICS code 517211 (issued Nov. 2005).

²¹ *Id.* The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is for firms with “1000 employees or more.”

²² U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, “Establishment and Firm Size (Including Legal Form of Organization,” Table 5, NAICS code 517212 (issued Nov. 2005).

²³ *Id.* The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is for firms with “1000 employees or more.”

²⁴ Amendment of the Commission’s Rules to Establish Part 27, the Wireless Communications Service (WCS), *Report and Order*, 12 FCC Rcd 10,785, 10,879 ¶ 194 (1997).

²⁵ See Letter from Aida Alvarez, Administrator, SBA, to Amy Zoslov, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, FCC (Dec. 2, 1998) (*Alvarez Letter 1998*).

13. **1670-1675 MHz Band.** An auction for one license in the 1670-1675 MHz band was conducted in 2003. The Commission defined a “small business” as an entity with attributable average annual gross revenues of not more than \$40 million for the preceding three years and thus would be eligible for a 15 percent discount on its winning bid for the 1670-1675 MHz band license. Further, the Commission defined a “very small business” as an entity with attributable average annual gross revenues of not more than \$15 million for the preceding three years and thus would be eligible to receive a 25 percent discount on its winning bid for the 1670-1675 MHz band license. One license was awarded. The winning bidder was not a small entity.

14. **Wireless Telephony.** Wireless telephony includes cellular, personal communications services, and specialized mobile radio telephony carriers. As noted, the SBA has developed a small business size standard for Wireless Telecommunications Carriers (except Satellite).²⁶ Under the SBA small business size standard, a business is small if it has 1,500 or fewer employees.²⁷ According to *Trends in Telephone Service* data, 434 carriers reported that they were engaged in wireless telephony.²⁸ Of these, an estimated 222 have 1,500 or fewer employees and 212 have more than 1,500 employees.²⁹ We have estimated that 222 of these are small under the SBA small business size standard.

15. **Broadband Personal Communications Services.** The broadband personal communications services (“PCS”) spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The Commission has created a small business size standard for the C and F Blocks as an entity that has average gross revenues of less than \$40 million in the three previous calendar years.³⁰ For the F Block, an additional small business size standard for “very small business” was added and is defined as an entity that, together with its affiliates, has average gross revenues of not more than \$15 million for the preceding three calendar years.³¹ These small business size standards, in the context of broadband PCS auctions, have been approved by the SBA.³² No small businesses within the SBA-approved small business size standards bid successfully for licenses in the A and B Blocks. There were 90 winning bidders that qualified as small entities in the C Block auctions. A total of 93 “small” and “very small” business bidders won approximately 40 percent of the 1,479 licenses for the D, E, and F Blocks.³³ In 1999, the Commission reaucted 155 C, D, E, and F Block licenses; there were 113 small business winning bidders.³⁴

16. In 2001, the Commission completed the auction of 422 C and F Block broadband PCS licenses in Auction 35. Of the 35 winning bidders in this auction, 29 qualified as “small” or “very small” businesses.³⁵ Subsequent events, concerning Auction 35, including judicial and agency determinations,

²⁶ 13 C.F.R. § 121.201, NAICS code 517210.

²⁷ *Id.*

²⁸ “Trends in Telephone Service” at Table 5.3.

²⁹ *Id.*

³⁰ See Amendment of Parts 20 and 24 of the Commission’s Rules – Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap, *Report and Order*, 11 FCC Rcd 7824, 7850-7852 ¶¶ 57-60 (1996) (*PCS Report and Order*); see also 47 C.F.R. § 24.720(b).

³¹ See *PCS Report and Order*, 11 FCC Rcd at 7852 ¶ 60.

³² See *Alvarez Letter 1998*.

³³ FCC News, “Broadband PCS, D, E and F Block Auction Closes,” No. 71744 (rel. Jan. 14, 1997).

³⁴ See “C, D, E, and F Block Broadband PCS Auction Closes,” *Public Notice*, 14 FCC Rcd 6688 (WTB 1999).

³⁵ See “C and F Block Broadband PCS Auction Closes; Winning Bidders Announced,” *Public Notice*, 16 FCC Rcd 2339 (WTB 2001).

resulted in a total of 163 C and F Block licenses being available for grant. In 2005, the Commission completed an auction of 188 C block licenses and 21 F block licenses in Auction 58. There were 24 winning bidders for 217 licenses.³⁶ Of the 24 winning bidders, 16 claimed small business status and won 156 licenses. In 2007, the Commission completed an auction of 33 licenses in the A, C, and F Blocks in Auction 71.³⁷ Of the 14 winning bidders, six were designated entities.³⁸ In 2008, the Commission completed an auction of 20 broadband PCS licenses in the C, D, E and F block licenses in Auction 78.³⁹

17. **Narrowband Personal Communications Services.** In 1994, the Commission conducted an auction for narrowband PCS licenses. A second auction was also conducted later in 1994. For purposes of the first two narrowband PCS auctions, “small businesses” were entities with average gross revenues for the prior three calendar years of \$40 million or less.⁴⁰ Through these auctions, the Commission awarded a total of 41 licenses, 11 of which were obtained by four small businesses.⁴¹ To ensure meaningful participation by small business entities in future auctions, the Commission adopted a two-tiered small business size standard.⁴² A “small business” is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than \$40 million.⁴³ A “very small business” is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than \$15 million.⁴⁴ The SBA has approved these small business size standards.⁴⁵ A third auction was conducted in 2001, with five bidders winning 317 (Metropolitan Trading Areas and nationwide) licenses.⁴⁶ Three of these bidders claimed status as a small or very small entity and won a total of 311 licenses.

18. **Advanced Wireless Services.** In 2006, the Commission conducted its first auction of Advanced Wireless Services licenses in the 1710-1755 MHz and 2110-2155 MHz bands (“AWS-1”),

³⁶ See “Broadband PCS Spectrum Auction Closes; Winning Bidders Announced for Auction No. 58,” *Public Notice*, 20 FCC Rcd 3703 (WTB 2005).

³⁷ See “Auction of Broadband PCS Spectrum Licenses Closes; Winning Bidders Announced for Auction No. 71,” *Public Notice*, 22 FCC Rcd 9247 (WTB 2007).

³⁸ *Id.*

³⁹ See “Auction of AWS-1 and Broadband PCS Licenses Rescheduled For August 13, 2008, Notice of Filing Requirements, Minimum Opening Bids, Upfront Payments and Other Procedures for Auction 78,” *Public Notice*, 23 FCC Rcd 7496 (WTB 2008) (*AWS-1 and Broadband PCS Procedures Public Notice*).

⁴⁰ Implementation of Section 309(j) of the Communications Act – Competitive Bidding Narrowband PCS, *Third Memorandum Opinion and Order and Further Notice of Proposed Rulemaking*, 10 FCC Rcd 175, 196 ¶ 46 (1994).

⁴¹ See “Announcing the High Bidders in the Auction of ten Nationwide Narrowband PCS Licenses, Winning Bids Total \$617,006,674,” *Public Notice*, PNWL 94-004 (rel. Aug. 2, 1994); “Announcing the High Bidders in the Auction of 30 Regional Narrowband PCS Licenses; Winning Bids Total \$490,901,787,” *Public Notice*, PNWL 94-27 (rel. Nov. 9, 1994).

⁴² Amendment of the Commission’s Rules to Establish New Personal Communications Services, Narrowband PCS, *Second Report and Order and Second Further Notice of Proposed Rule Making*, 15 FCC Rcd 10,456, 10,476 ¶ 40 (2000) (*Narrowband PCS Second Report and Order*).

⁴³ *Narrowband PCS Second Report and Order*, 15 FCC Rcd at 10,476 ¶ 40.

⁴⁴ *Id.*

⁴⁵ See *Alvarez Letter 1998*.

⁴⁶ See “Narrowband PCS Auction Closes,” *Public Notice*, 16 FCC Rcd 18,663 (WTB 2001).

designated as Auction 66.⁴⁷ The Commission defined “small business” as an entity with attributed average annual gross revenues that exceeded \$15 million and did not exceed \$40 million for the preceding three years.⁴⁸ A small business received a 15 percent discount on its winning bid.⁴⁹ A “very small business” is defined as an entity with attributed average annual gross revenues that did not exceed \$15 million for the preceding three years.⁵⁰ A very small business received a 25 percent discount on its winning bid.⁵¹ In Auction 66, thirty-one winning bidders identified themselves as very small businesses and won 142 licenses.⁵² Twenty-six of the winning bidders identified themselves as small businesses and won 73 licenses.⁵³ In 2008, the Commission conducted an auction of AWS-1 licenses, designated as Auction 78, in which it offered 35 AWS-1 licenses for which there were no winning bids in Auction 66.⁵⁴ Four winning bidders that identified themselves as very small businesses won 17 AWS-1 licenses; three of the winning bidders that identified themselves as a small business won five AWS-1 licenses.⁵⁵

19. **700 MHz Band Licenses.** The Commission previously adopted criteria for defining three groups of small businesses for purposes of determining their eligibility for special provisions such as bidding credits.⁵⁶ The Commission defined a “small business” as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding \$40 million for the preceding three years.⁵⁷ A “very small business” is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than \$15 million for the preceding three years.⁵⁸ Additionally, the Lower 700 MHz Band had a third category of small business status for Metropolitan/Rural Service Area (“MSA/RSA”) licenses, identified as “entrepreneur” and defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than \$3 million for the preceding three years.⁵⁹ The SBA approved these small size standards.⁶⁰ The Commission conducted an auction in 2002 of 740 Lower 700 MHz Band licenses (one

⁴⁷ See “Auction of Advanced Wireless Services Licenses Scheduled for June 29, 2006; Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments and Other Procedures for Auction No. 66,” AU Docket No. 06-30, *Public Notice*, 21 FCC Rcd 4562 (2006) (*Auction 66 Procedures Public Notice*).

⁴⁸ 47 C.F.R. § 27.1102(a)(1).

⁴⁹ See 47 C.F.R. § 1.2110(f)(2).

⁵⁰ 47 C.F.R. § 27.1102(a)(2).

⁵¹ See 47 C.F.R. § 1.2110(f)(2).

⁵² See “Auction of Advanced Wireless Services Licenses Closes; Winning Bidders Announced for Auction No. 66,” *Public Notice*, 21 FCC Rcd 10,521 (2006) (*Auction 66 Closing Public Notice*).

⁵³ See *id.*

⁵⁴ See *AWS-1 and Broadband PCS Procedures Public Notice*, 23 FCC Rcd at 7499. Auction 78 also included an auction of broadband PCS licenses.

⁵⁵ See “Auction of AWS-1 and Broadband PCS Licenses Closes, Winning Bidders Announced for Auction 78, Down Payments Due September 9, 2008, FCC Forms 601 and 602 Due September 9, 2008, Final Payments Due September 23, 2008, Ten-Day Petition to Deny Period,” *Public Notice*, 23 FCC Rcd 12,749 (WTB 2008).

⁵⁶ See Reallocation and Service Rules for the 698-746 MHz Spectrum Band (Television Channels 52-59), *Report and Order*, 17 FCC Rcd 1022 (2002) (*Channels 52-59 Report and Order*).

⁵⁷ See *Channels 52-59 Report and Order*, 17 FCC Rcd at 1087-88 ¶ 172.

⁵⁸ See *id.*

⁵⁹ See *id.* at 1088 ¶ 173.

⁶⁰ See Letter from Aida Alvarez, Administrator, SBA, to Thomas Sugrue, Chief, Wireless Telecommunications Bureau, FCC (Aug. 10, 1999) (*Alvarez Letter 1999*).

license in each of the 734 MSAs/RSAs and one license in each of the six Economic Area Groupings (EAGs)). Of the 740 licenses available for auction, 484 licenses were sold to 102 winning bidders.⁶¹ Seventy-two of the winning bidders claimed small business, very small business or entrepreneur status and won a total of 329 licenses.⁶² The Commission conducted a second Lower 700 MHz Band auction in 2003 that included 256 licenses: 5 EAG licenses and 476 Cellular Market Area licenses.⁶³ Seventeen winning bidders claimed small or very small business status and won 60 licenses, and nine winning bidders claimed entrepreneur status and won 154 licenses.⁶⁴ In 2005, the Commission completed an auction of 5 licenses in the Lower 700 MHz Band, designated Auction 60. There were three winning bidders for five licenses. All three winning bidders claimed small business status.⁶⁵

20. In 2007, the Commission adopted the *700 MHz Second Report and Order*, which revised the band plan for the commercial (including Guard Band) and public safety spectrum, adopted services rules, including stringent build-out requirements, an open platform requirement on the C Block, and a requirement on the D Block licensee to construct and operate a nationwide, interoperable wireless broadband network for public safety users.⁶⁶ In 2008, the Commission conducted Auction 73 which offered all available, commercial 700 MHz Band licenses (1,099 licenses) for bidding using the Commission's standard simultaneous multiple-round ("SMR") auction format for the A, B, D, and E Block licenses and an SMR auction design with hierarchical package bidding ("HPB") for the C Block licenses. For Auction 73, a bidder with attributed average annual gross revenues that did not exceed \$15 million for the preceding three years (very small business) qualified for a 25 percent discount on its winning bids. A bidder with attributed average annual gross revenues that exceeded \$15 million, but did not exceed \$40 million for the preceding three years, qualified for a 15 percent discount on its winning bids. At the conclusion of Auction 73, 36 winning bidders identifying themselves as very small businesses won 330 of the 1,090 licenses, and 20 winning bidders identifying themselves as a small business won 49 of the 1,090 licenses.⁶⁷ The provisionally winning bids for the A, B, C, and E Block

⁶¹ See "Lower 700 MHz Band Auction Closes," *Public Notice*, 17 FCC Rcd 17,272 (WTB 2002).

⁶² *Id.*

⁶³ See "Lower 700 MHz Band Auction Closes," *Public Notice*, 18 FCC Rcd 11,873 (WTB 2003).

⁶⁴ See *id.*

⁶⁵ "Auction of Lower 700 MHz Band Licenses Closes, Winning Bidders Announced for Auction No. 60, Down Payments due August 19, 2005, FCC Forms 601 and 602 due August 19, 2005, Final Payment due September 2, 2005, Ten-Day Petition to Deny Period," *Public Notice*, 20 FCC Rcd 13,424 (WTB 2005).

⁶⁶ Service Rules for the 698-746, 747-762 and 777-792 MHz Band, WT Docket No. 06-150, Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, CC Docket No. 94-102, Section 68.4(a) of the Commission's Rules Governing Hearing Aid-Compatible Telephone, WT Docket No. 01-309, Biennial Regulatory Review – Amendment of Parts 1, 22, 24, 27, and 90 to Streamline and Harmonize Various Rules Affecting Wireless Radio Services, WT Docket No. 03-264, Former Nextel Communications, Inc. Upper 700 MHz Guard Band Licenses and Revisions to Part 27 of the Commission's Rules, WT Docket No. 06-169, Implementing a Nationwide, Broadband Interoperable Public Safety Network in the 700 MHz Band, PS Docket No. 06-229, Development of Operational, Technical and Spectrum Requirements for Meeting Federal, State, and Local Public Safety Communications Requirements Through the Year 2010, WT Docket No. 96-86, *Second Report and Order*, 22 FCC Rcd 15,289 (2007) (*700 MHz Second Report and Order*).

⁶⁷ See "Auction of 700 MHz Band Licenses Closes, Winning Bidders Announced for Auction 73, Down Payments Due April 3, 2008, FCC Forms 601 and 602 April 3, 2008, Final Payment Due April 17, 2008, Ten-Day Petition to Deny Period," *Public Notice*, 23 FCC Rcd 4572, 4572-73 (WTB 2008).

licenses exceeded the aggregate reserve prices for those blocks. However, the provisionally winning bid for the D Block license did not meet the applicable reserve price and thus did not become a winning bid.⁶⁸

21. **700 MHz Guard Band Licenses.** In the *700 MHz Guard Band Order*, the Commission adopted size standards for “small businesses” and “very small businesses” for purposes of determining their eligibility for special provisions such as bidding credits and installment payments.⁶⁹ A small business in this service is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding \$40 million for the preceding three years.⁷⁰ Additionally, a very small business is an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than \$15 million for the preceding three years.⁷¹ SBA approval of these definitions is not required.⁷² In 2000, the Commission conducted an auction of 52 Major Economic Area (“MEA”) 700 MHz Guard Band licenses.⁷³ Of the 104 licenses auctioned, 96 licenses were sold to nine bidders, of which five identified themselves as small businesses and won a total of 26 licenses.⁷⁴ A second auction of eight 700 MHz Guard Band licenses commenced and closed in 2001. Of three bidders, one was a small business that won two of the eight licenses.⁷⁵

22. **Specialized Mobile Radio.** The Commission awards small business bidding credits in auctions for Specialized Mobile Radio (“SMR”) geographic area licenses in the 800 MHz and 900 MHz bands to entities that had revenues of no more than \$15 million in each of the three previous calendar years.⁷⁶ The Commission awards very small business bidding credits to entities that had revenues of no more than \$3 million in each of the three previous calendar years.⁷⁷ The SBA has approved these small business size standards for the 800 MHz and 900 MHz SMR Services.⁷⁸ The Commission has held auctions for geographic area licenses in the 800 MHz and 900 MHz bands. The 900 MHz SMR auction was completed in 1996.⁷⁹ Sixty bidders claiming that they qualified as small businesses under the \$15 million size standard won 263 geographic area licenses in the 900 MHz SMR band.⁸⁰ The 800 MHz

⁶⁸ *Id.*

⁶⁹ See Service Rules for the 746-764 MHz Bands, and Revisions to Part 27 of the Commission’s Rules, *Second Report and Order*, 15 FCC Rcd 5299 (2000) (*746-764 MHz Band Second Report and Order*).

⁷⁰ See *746-764 MHz Band Second Report and Order*, 15 FCC Rcd at 5343 ¶ 108.

⁷¹ See *id.*

⁷² See *id.* at 5343 ¶ 108 n.246 (for the 746-764 MHz and 776-794 MHz bands, the Commission is exempt from 15 U.S.C. § 632, which requires Federal agencies to obtain SBA approval before adopting small business size standards).

⁷³ See “700 MHz Guard Bands Auction Closes: Winning Bidders Announced,” *Public Notice*, 15 FCC Rcd 18,026 (WTB 2000).

⁷⁴ *Id.*

⁷⁵ See “700 MHz Guard Bands Auction Closes: Winning Bidders Announced,” *Public Notice*, 16 FCC Rcd 4590 (WTB 2001).

⁷⁶ 47 C.F.R. §§ 90.810, 90.814(b), 90.912.

⁷⁷ 47 C.F.R. §§ 90.810, 90.814(b), 90.912.

⁷⁸ See *Alvarez Letter 1999*.

⁷⁹ “FCC Announces Winning Bidders in the Auction of 1,020 Licenses to Provide 900 MHz SMR in Major Trading Areas: Down Payments due April 22, 1996, FCC Form 600s due April 29, 1996,” *Public Notice*, 11 FCC Rcd 18,599 (WTB 1996).

⁸⁰ *Id.*

SMR auction for the upper 200 channels was conducted in 1997. Ten bidders claiming that they qualified as small businesses under the \$15 million size standard won 38 geographic area licenses for the upper 200 channels in the 800 MHz SMR band.⁸¹ A second auction for the 800 MHz band was conducted in 2002 and included 23 BEA licenses. One bidder claiming small business status won five licenses.⁸²

23. The auction of the 1,053 800 MHz SMR geographic area licenses for the General Category channels was conducted in 2000. Eleven bidders won 108 geographic area licenses for the General Category channels in the 800 MHz SMR band qualified as small businesses under the \$15 million size standard.⁸³ In an auction completed in 2000, a total of 2,800 Economic Area licenses in the lower 80 channels of the 800 MHz SMR service were awarded.⁸⁴ Of the 22 winning bidders, 19 claimed small business status and won 129 licenses. Thus, combining all three auctions, 40 winning bidders for geographic licenses in the 800 MHz SMR band claimed status as small business.

24. In addition, there are numerous incumbent site-by-site SMR licensees and licensees with extended implementation authorizations in the 800 and 900 MHz bands. We do not know how many firms provide 800 MHz or 900 MHz geographic area SMR pursuant to extended implementation authorizations, nor how many of these providers have annual revenues of no more than \$15 million. One firm has over \$15 million in revenues. In addition, we do not know how many of these firms have 1500 or fewer employees.⁸⁵ We assume, for purposes of this analysis, that all of the remaining existing extended implementation authorizations are held by small entities, as that small business size standard is approved by the SBA.

25. **Cellular Radiotelephone Service.** Auction 77 was held to resolve one group of mutually exclusive applications for Cellular Radiotelephone Service licenses for unserved areas in New Mexico.⁸⁶ Bidding credits for designated entities were not available in Auction 77.⁸⁷ In 2008, the Commission completed the closed auction of one unserved service area in the Cellular Radiotelephone Service, designated as Auction 77. Auction 77 concluded with one provisionally winning bid for the unserved area totaling \$25,002.⁸⁸

26. **Private Land Mobile Radio (“PLMR”).** PLMR systems serve an essential role in a range of industrial, business, land transportation, and public safety activities. These radios are used by companies of all sizes operating in all U.S. business categories, and are often used in support of the licensee’s primary (non-telecommunications) business operations. For the purpose of determining whether a licensee of a PLMR system is a small business as defined by the SBA, we use the broad census

⁸¹ See “Correction to Public Notice DA 96-586 ‘FCC Announces Winning Bidders in the Auction of 1020 Licenses to Provide 900 MHz SMR in Major Trading Areas,’” *Public Notice*, 11 FCC Rcd 18,637 (WTB 1996).

⁸² See “Multi-Radio Service Auction Closes,” *Public Notice*, 17 FCC Rcd 1446 (WTB 2002).

⁸³ See “800 MHz Specialized Mobile Radio (SMR) Service General Category (851-854 MHz) and Upper Band (861-865 MHz) Auction Closes; Winning Bidders Announced,” *Public Notice*, 15 FCC Rcd 17,162 (WTB 2000).

⁸⁴ See, “800 MHz SMR Service Lower 80 Channels Auction Closes; Winning Bidders Announced,” *Public Notice*, 16 FCC Rcd 1736 (WTB 2000).

⁸⁵ See generally 13 C.F.R. § 121.201, NAICS code 517210.

⁸⁶ See “Closed Auction of Licenses for Cellular Unserved Service Area Scheduled for June 17, 2008, Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments, and Other Procedures for Auction 77,” *Public Notice*, 23 FCC Rcd 6670 (WTB 2008).

⁸⁷ *Id.* at 6685.

⁸⁸ See “Auction of Cellular Unserved Service Area License Closes, Winning Bidder Announced for Auction 77, Down Payment due July 2, 2008, Final Payment due July 17, 2008,” *Public Notice*, 23 FCC Rcd 9501 (WTB 2008).

category, Wireless Telecommunications Carriers (except Satellite). This definition provides that a small entity is any such entity employing no more than 1,500 persons.⁸⁹ The Commission does not require PLMR licensees to disclose information about number of employees, so the Commission does not have information that could be used to determine how many PLMR licensees constitute small entities under this definition. We note that PLMR licensees generally use the licensed facilities in support of other business activities, and therefore, it would also be helpful to assess PLMR licensees under the standards applied to the particular industry subsector to which the licensee belongs.⁹⁰

27. As of March 2010, there were 424,162 PLMR licensees operating 921,909 transmitters in the PLMR bands below 512 MHz. We note that any entity engaged in a commercial activity is eligible to hold a PLMR license, and that any revised rules in this context could therefore potentially impact small entities covering a great variety of industries.

28. **Rural Radiotelephone Service.** The Commission has not adopted a size standard for small businesses specific to the Rural Radiotelephone Service.⁹¹ A significant subset of the Rural Radiotelephone Service is the Basic Exchange Telephone Radio System (“BETRS”).⁹² In the present context, we will use the SBA’s small business size standard applicable to Wireless Telecommunications Carriers (except Satellite), *i.e.*, an entity employing no more than 1,500 persons.⁹³ There are approximately 1,000 licensees in the Rural Radiotelephone Service, and the Commission estimates that there are 1,000 or fewer small entity licensees in the Rural Radiotelephone Service that may be affected by the rules and policies proposed herein.

29. **Broadband Radio Service and Educational Broadband Service.** Broadband Radio Service systems, previously referred to as Multipoint Distribution Service (“MDS”) and Multichannel Multipoint Distribution Service (“MMDS”) systems, and “wireless cable,” transmit video programming to subscribers and provide two-way high speed data operations using the microwave frequencies of the Broadband Radio Service (“BRS”) and Educational Broadband Service (“EBS”) (previously referred to as the Instructional Television Fixed Service (“ITFS”).⁹⁴ In connection with the 1996 BRS auction, the Commission established a small business size standard as an entity that had annual average gross revenues of no more than \$40 million in the previous three calendar years.⁹⁵ The BRS auctions resulted in 67 successful bidders obtaining licensing opportunities for 493 Basic Trading Areas (“BTAs”). Of the 67 auction winners, 61 met the definition of a small business. BRS also includes licensees of stations authorized prior to the auction. At this time, we estimate that of the 61 small business BRS auction winners, 48 remain small business licensees. In addition to the 48 small businesses that hold BTA authorizations, there are approximately 392 incumbent BRS licensees that are considered small entities.⁹⁶

⁸⁹ See 13 C.F.R. § 121.201, NAICS code 517210.

⁹⁰ See generally 13 C.F.R. § 121.201.

⁹¹ The service is defined in 47 C.F.R. § 22.99.

⁹² BETRS is defined in 47 C.F.R. §§ 22.757 and 22.759.

⁹³ 13 C.F.R. § 121.201, NAICS code 517210.

⁹⁴ Amendment of Parts 21 and 74 of the Commission’s Rules with Regard to Filing Procedures in the Multipoint Distribution Service and in the Instructional Television Fixed Service and Implementation of Section 309(j) of the Communications Act – Competitive Bidding, MM Docket No. 94-131 and PP Docket No. 93-253, *Report and Order*, 10 FCC Rcd 9589, 9593 ¶ 7 (1995).

⁹⁵ 47 C.F.R. § 21.961(b)(1).

⁹⁶ 47 U.S.C. § 309(j). Hundreds of stations were licensed to incumbent MDS licensees prior to implementation of Section 309(j) of the Communications Act of 1934, 47 U.S.C. § 309(j). For these pre-auction licenses, the applicable standard is SBA’s small business size standard.

After adding the number of small business auction licensees to the number of incumbent licensees not already counted, we find that there are currently approximately 440 BRS licensees that are defined as small businesses under either the SBA or the Commission's rules. The Commission has adopted three levels of bidding credits for BRS: (i) a bidder with attributed average annual gross revenues that exceed \$15 million and do not exceed \$40 million for the preceding three years (small business) is eligible to receive a 15 percent discount on its winning bid; (ii) a bidder with attributed average annual gross revenues that exceed \$3 million and do not exceed \$15 million for the preceding three years (very small business) is eligible to receive a 25 percent discount on its winning bid; and (iii) a bidder with attributed average annual gross revenues that do not exceed \$3 million for the preceding three years (entrepreneur) is eligible to receive a 35 percent discount on its winning bid.⁹⁷ In 2009, the Commission conducted Auction 86, which offered 78 BRS licenses.⁹⁸ Auction 86 concluded with ten bidders winning 61 licenses.⁹⁹ Of the ten, two bidders claimed small business status and won 4 licenses; one bidder claimed very small business status and won three licenses; and two bidders claimed entrepreneur status and won six licenses.

30. In addition, the SBA's Cable Television Distribution Services small business size standard is applicable to EBS. There are presently 2,032 EBS licensees. All but 100 of these licenses are held by educational institutions. Educational institutions are included in this analysis as small entities.¹⁰⁰ Thus, we estimate that at least 1,932 licensees are small businesses. Since 2007, Cable Television Distribution Services have been defined within the broad economic census category of Wired Telecommunications Carriers; that category is defined as follows: "This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies."¹⁰¹ The SBA defines a small business size standard for this category as any such firms having 1,500 or fewer employees. To gauge small business prevalence for these cable services we must, however, use current census data that are based on the previous category of Cable and Other Program Distribution and its associated size standard; that size standard was: all such firms having \$13.5 million or less in annual receipts.¹⁰² According to Census Bureau data for 2002, there were a total of 1,191 firms in this previous category that operated for the entire year.¹⁰³ Of this total, 1,087 firms had

⁹⁷ 47 C.F.R. § 27.1218. See also "Auction of Broadband Radio Service (BRS) Licenses, Scheduled for October 27, 2009, Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments, and Other Procedures for Auction 86," *Public Notice*, 24 FCC Rcd 8277, 8296 (WTB 2009) (*Auction 86 Procedures Public Notice*).

⁹⁸ *Auction 86 Procedures Public Notice*, 24 FCC Rcd at 8280.

⁹⁹ "Auction of Broadband Radio Service Licenses Closes, Winning Bidders Announced for Auction 86, Down Payments Due November 23, 2009, Final Payments Due December 8, 2009, Ten-Day Petition to Deny Period," *Public Notice*, 24 FCC Rcd 13,572 (WTB 2009).

¹⁰⁰ The term "small entity" within SBREFA applies to small organizations (nonprofits) and to small governmental jurisdictions (cities, counties, towns, townships, villages, school districts, and special districts with populations of less than 50,000). 5 U.S.C. §§ 601(4)-(6). We do not collect annual revenue data on EBS licensees.

¹⁰¹ U.S. Census Bureau, 2007 NAICS Definitions, "517110 Wired Telecommunications Carriers" (partial definition); <http://www.census.gov/naics/2007/def/ND517110.HTM#N517110>.

¹⁰² 13 C.F.R. § 121.201, NAICS code 517110.

¹⁰³ U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, Table 4, Receipts Size of Firms for the United States: 2002, NAICS code 517510 (issued November 2005).

annual receipts of under \$10 million, and 43 firms had receipts of \$10 million or more but less than \$25 million.¹⁰⁴ Thus, the majority of these firms can be considered small.

31. **Internet Service Providers (“ISPs”).** The 2007 Economic Census places ISPs, whose services might include voice over Internet protocol (“VoIP”), in either of two categories, depending on whether the service is provided over the provider’s own telecommunications connections (*e.g.*, cable and DSL ISPs), or over client-supplied telecommunications connections (*e.g.*, dial-up ISPs). The former are within the category of Wired Telecommunications Carriers,¹⁰⁵ which has an SBA small business size standard of 1,500 or fewer employees.¹⁰⁶ The latter are within the category of All Other Telecommunications,¹⁰⁷ which has a size standard of annual receipts of \$25 million or less.¹⁰⁸ The most current Census Bureau data for all such firms, however, are the 2002 data for the previous census category called Internet Service Providers.¹⁰⁹ That category had a small business size standard of \$21 million or less in annual receipts, which was revised in late 2005 to \$23 million. The 2002 data show that there were 2,529 such firms that operated for the entire year.¹¹⁰ Of those, 2,437 firms had annual receipts of under \$10 million, and an additional 47 firms had receipts of between \$10 million and \$24,999,999.¹¹¹ Consequently, we estimate that the majority of ISP firms are small entities.

32. The ISP industry has changed dramatically since 2002. The 2002 data cited above may therefore include entities that no longer provide Internet access service and may exclude entities that now provide such service. To ensure that this IRFA describes the universe of small entities that our action might affect, we discuss in turn several different types of entities that might be providing Internet access service.

33. We note that, although we have no specific information on the number of small entities that provide Internet access service over unlicensed spectrum, we include these entities in our IRFA.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

34. As discussed above, this NPRM seeks public comment on creation of a new Mobility Fund within the high-cost mechanism of the federal universal service program. The Mobility fund would make available non-recurring support to providers to deploy 3G or better networks where these services are not currently available. The proposed Mobility Fund would use market mechanisms – specifically, a reverse-auction – to compare all offers to provide service across the unserved areas eligible for participation in the Mobility Fund program.

¹⁰⁴ *Id.* An additional 61 firms had annual receipts of \$25 million or more.

¹⁰⁵ U.S. Census Bureau, 2007 NAICS Definitions, “517110 Wired Telecommunications Carriers”, <http://www.census.gov/naics/2007/def/ND517110.HTM#N517110>.

¹⁰⁶ 13 C.F.R. § 121.201, NAICS code 517110 (updated for inflation in 2008).

¹⁰⁷ U.S. Census Bureau, 2007 NAICS Definitions, “517919 All Other Telecommunications”; <http://www.census.gov/naics/2007/def/ND517919.HTM#N517919>.

¹⁰⁸ 13 C.F.R. § 121.201, NAICS code 517919 (updated for inflation in 2008).

¹⁰⁹ U.S. Census Bureau, “2002 NAICS Definitions, “518111 Internet Service Providers”; <http://www.census.gov/eped/naics02/def/NDEF518.HTM>.

¹¹⁰ U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, “Establishment and Firm Size (Including Legal Form of Organization),” Table 4, NAICS code 518111 (issued Nov. 2005).

¹¹¹ An additional 45 firms had receipts of \$25 million or more.

35. In proposing the Mobility Fund, the Commission seeks comment on various reporting, record-keeping, and other compliance requirements for the parties that will be applying for and receiving support from the Mobility Fund. The NPRM proposes, for example, that parties interested in participating in a Mobility Fund auction must disclose certain information, such as their ownership, before participating the auction. The NPRM proposes that auction winners be required to provide more detailed information, including project descriptions and timetables. The parties receiving support would be subject to certain reporting requirements demonstrating a certain level of network quality of service and reasonably comparable rates, and would need to provide, in annual reports, data from drive tests showing mobile transmissions to and from the network meeting or exceeding certain minimum standards. The NPRM also proposes a five-year record retention period, consistent with the record retention period for other universal service high-cost support.

36. Because the overall design and scope of the Mobility Fund have not been finalized, we do not have a more specific estimate of potential reporting, recordkeeping, and compliance burdens on small businesses. The Commission anticipates that commenters will address the reporting, record-keeping, and other compliance proposals made in the NPRM, and will provide reliable information on any costs and burdens on small businesses for inclusion in the record of this proceeding.

E. Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

37. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.¹¹²

38. The reporting, recordkeeping, and other compliance requirements in this NPRM could have an impact on both small and large entities. However, even though the impact may be more financially burdensome for smaller entities, the Commission believes the impact of such requirements is outweighed by the benefit of providing the additional USF support necessary to make advanced wireless services available to areas of the nation that are currently unserved. Further, these requirements are necessary to ensure that the statutory goals of Section 254 of the Act are met without waste, fraud, or abuse.

39. The Commission expects to consider the economic impact on small entities, as identified in comments filed in response to the NPRM, in reaching its final conclusions and taking action in this proceeding.

F. Federal Rules that May Duplicate, Overlap, or Conflict With the Proposed Rule

40. None.

¹¹² See 5 U.S.C. § 603(c).

**STATEMENT OF
CHAIRMAN JULIUS GENACHOWSKI**

Re: *Universal Service Reform: Mobility Fund, WT Docket No. 10-208*

Today we take the next significant step in reforming and modernizing the Universal Service Fund, to update for the 21st century our national commitment to bringing the benefits of modern communications to all Americans.

Moving forward on the Mobility Fund implements another key recommendation of the National Broadband Plan. The Broadband Plan recognized the need to expand access to mobile voice and broadband in those areas of our country where it will make the biggest difference. We propose doing so in a way that harnesses the power of the market to ensure efficient government spending.

Consistent with the principles of fiscal responsibility that will guide all our efforts on universal service reform, we will promote our universal service goals without increasing the size of the Universal Service Fund or the burden on American consumers, who ultimately support the Fund.

USF has brought many benefits over the years. This public-private partnership has brought affordable telephone service to virtually all reaches of our country, strengthening communities and our economy.

But the status quo for USF is unsustainable. The current program is designed to support the communications networks of the past, not the future. It is – we have to acknowledge – filled with inefficiencies, providing, for example, annual subsidies of more than \$10,000 a line to carriers serving communities where there are *unsubsidized* competitors. And it is poorly targeted in too many respects, with perverse incentives and the result that millions of Americans remain unserved by broadband.

Representatives Rick Boucher and Lee Terry were right when they said: “The Universal Service Fund is broken.”

At the same time, USF’s mission of making sure all Americans have access to communications services at reasonable rates remains vital. Broadband Internet is supplanting telephone service as our basic communications platform, and it is essential for full participation in our digital economy and 21st century democracy. Yet today, up to 24 million Americans in the rural areas served by USF are shut out of the broadband future – either fixed or mobile.

The Universal Service Fund can’t continue moving in the wrong direction. Today’s action begins to right its course. The pro-consumer, pro-market Mobility Fund will begin closing the “mobility gap”: the millions of Americans living in communities that lack current-generation mobile service or, even worse, any mobile service at all, and millions more who work in or travel through these areas. The Mobility Fund will also create jobs and fuel economic growth, particularly in rural communities.

Here are three key things people should know about the Mobility Fund:

First, in addition to tackling serious mobility gaps, the Mobility Fund is fundamentally about spending limited resources more wisely. The Fund uses existing universal service funds recovered from Verizon Wireless and Sprint, which were receiving duplicative subsidies to serve areas with other mobile voice providers. Verizon Wireless and Sprint surrendered this support as part of FCC-approved transactions, and we will be targeting those funds to areas that truly need it.

Second, the Mobility Fund demonstrates our commitment to using market forces to discipline government spending. We propose using a market mechanism – reverse auctions – to identify the areas where we can get the most bang for the USF buck, and to identify the lowest-cost provider in those areas. The Mobility Fund will unleash private investment and create jobs by providing a one-time injection of seed capital to incentivize private companies to invest in deploying wireless networks in communities that would otherwise be bypassed.

Finally, the Mobility Fund proposal is a model for how we can achieve broader USF reform: efficiently targeting support to spur private investment in 21st century networks where support is truly needed, while putting USF on a fiscally responsible and sustainable path.

I thank the staff for their hard work on this item.

**STATEMENT OF
COMMISSIONER MICHAEL J. COPPS**

Re: *Universal Service Reform: Mobility Fund, WT Docket No. 10-208*

Here we have yet another step toward achieving a key goal of the National Broadband Plan: connecting America to advanced mobile services. Getting this Mobility Fund up and running is an important step as we work simultaneously to reform the Universal Service Fund. While it's not going to get everyone and every place into advanced wireless service, it is going to help, it is important, and it's something we can and should do on an aggressive timeline to realize needed and timely investment in unserved and underserved America.

The new Mobility Fund will provide a much-needed down payment on closing America's digital divide. We've got a ways to go. That was brought home to me over the past couple of weeks as my wife and I vacationed in China. Even as we toured the treasures of Chinese antiquity, like the Great Wall, the Terra Cotta warriors and the Forbidden City, we also were able to take advantage of some pretty impressive telecommunications technology. We sailed down the Yangtze River, surrounded on both sides by mountains, and as we floated down those long and beautiful river valleys, I was almost never without 3G service. The sight of that 3G signal along the top of my Blackberry screen almost everywhere we went on our trip made quite an impression on me. I dare say there are many places in the United States—and they're not just river valleys, either—where I wouldn't find that kind of service. That's one example of why moving ahead with a Mobility Fund and comprehensive USF reform is so important.

I want to commend the Wireless Telecommunications Bureau and the Wireline Competition Bureau for their hard work in bringing this item to us. In it, we rightly consider how to get the most bang-for-the-buck from Mobility Fund support, how to ensure that smaller carriers can compete in the bidding, and how to protect consumers and ratepayer dollars once investment is made. I am particularly grateful to the staff for ensuring that today's Notice asks questions not only about expanding coverage for those Americans in areas that are underserved by 3G and 4G service, but also that it examines how we might prioritize support to those areas that are truly unserved.

I look forward to working with the Chairman and my colleagues to move this proceeding to completion quickly. And, I will continue to work with our Office of Native Affairs as we consult government-to-government to examine options for Mobility Fund and other USF support to expand coverage on tribal lands. Thanks to everyone who had a hand in this.

**STATEMENT OF
COMMISSIONER ROBERT M. McDOWELL**

Re: *Universal Service Reform: Mobility Fund, WT Docket No. 10-208*

While broadband has proliferated across America faster than any other transformative modern technology, many areas remain unserved by wireline or wireless broadband. A variety of circumstances have produced these scenarios, including the economic challenges of building broadband infrastructure in extremely remote areas with hostile climates and topographies. While working on this Notice of Proposed Rulemaking, I was reminded of my trip to the North Slope of Alaska last year; 350 miles north of the Arctic Circle; in winter; where it was 55 degrees below zero. Competition and innovation have been slow to reach such parts of the country. It is appropriate, therefore, for the Commission to explore ways to connect such unserved areas. Accordingly, I support the initiation of this process.

This Notice sets forth some creative ideas – such as the use of reverse auctions, a concept that I have advocated for years. It does, however, raise some questions that require further exploration. For example:

- The Commission's administration of the proposed auction system may be challenging. And, the administration of the distribution of these funds by the Universal Service Administrative Company (USAC) may result in a significant expansion of USAC. I look forward to learning what additional resources and spending may be required for both the Commission and USAC to carry out these proposed responsibilities.
- Second, how can the Commission ensure that a new program does not result in an increase in the overall size of the universal service fund?
- How can the Commission ensure that applicants are selected in an objective manner, in keeping with Congress' intent for the overall auction process?
- In the same vein, how can the Commission ensure that the most remote parts of the country are not left behind?
- Lastly, can we remove burdensome regulatory hurdles to ensure that any entities that participate in this proposed program have a fair chance of succeeding so they can continue to provide service for years to come?

As I have mentioned many times over the years, I favor *comprehensive* reform of our universal service system. I understand that this rulemaking is the beginning of the process for one piece of the puzzle, and I invite a multitude of comments and ideas that can be considered as part of the overall reform efforts. The Chairman should be commended for creating a fair process for debating new ideas. And, I thank the staff of both the Wireless Telecommunications Bureau and the Wireline Competition Bureau for their diligence in this rulemaking, in addition to their commitment to overall reform of the universal service system.

**STATEMENT OF
COMMISSIONER MIGNON L. CLYBURN**

Re: *Universal Service Reform: Mobility Fund, WT Docket No. 10-208*

Approximately three years ago, my state colleagues on the Federal-State Joint Board on Universal Service recognized the importance of mobile wireless voice and data services for our nation. They called on the Commission to create a Mobility Fund in order to help support the construction of wireless facilities in unserved areas. The Commission staff heard that call, and in the National Broadband Plan recommended that we move forward with creating a Mobility Fund. As we know from our *14th Annual Mobile Wireless Report*, those areas that are currently unserved are largely rural and are the hardest to serve. Nonetheless, I believe it is critical that consumers, whether they live, work or travel in urban or rural areas, have access to mobile voice and data services. In fact, most Americans anticipate that their mobile devices will work no matter where they are. With this Fund, we have an opportunity to meet that expectation for some areas without 3G infrastructure.

I am pleased that this Commission is exploring how to provide necessary financial support in order to ensure that more Americans can benefit from mobile voice and data services. I support the detailed questions raised in this Notice on how to devise a Mobility Fund. I encourage the industry to work with our staff on the development of the Fund so that consumers can obtain the most benefits with the resources available. I want to thank the staff of both the Wireless Telecommunications Bureau and the Wireline Competition Bureau who worked diligently on the framework for this item, and the Chairman for his leadership on this issue.

**STATEMENT OF
COMMISSIONER MEREDITH ATTWELL BAKER**

Re: *Universal Service Reform: Mobility Fund, WT Docket No. 10-208*

I appreciate this item's focus on the wireless-specific challenges related to universal service and mobile broadband deployment. While I do have some reservations about the specifics and timing of the Mobility Fund as proposed, I support the underlying objective to adopt policies to promote more widespread deployment of basic wireless and mobile broadband solutions.

As a threshold matter, I want to make sure that we do not lose sight of the need for comprehensive reform of Universal Service. I believe that it is critical to move toward fundamental reform of the Universal Service Fund, targeted to broadband investment. We need to transition to a support mechanism that is effective, efficient, and sustainable for areas where market forces are not sufficient to drive broadband services to America's consumers. I would not want to let our work on the Mobility Fund in any way detract from our collective focus on the difficult business of comprehensive, cost-effective reform. Similarly, I have concerns with any additional outlay of universal service funds. We must make sure that we are using USF funds as prudently as possible to ensure that we get the greatest benefit for the public's money.

With respect to the Mobility Fund itself, I note that the Fund would be created through a one-time payment. Operationally, I have a concern as to whether a one-time support mechanism will prove sustainable to provide mobile broadband services in unserved areas, or whether this effort will lead to a future further drain on resources to maintain the expanded infrastructure.

Lastly, I am hopeful that this proceeding is not our only opportunity to address policies to promote greater deployment of basic wireless and mobile broadband services to rural and underserved communities. Upgrading service from 2G to 3G "or better" service in one county may well be worthwhile, but it does not address the challenge facing those counties that have no wireless service at all today. There are few more needy—or visible—consumers than those who live in the unserved areas on mobile providers' maps. In the coming months, I am optimistic we can consider additional measures, including but not limited to, expanded use of appropriately regulated signal boosters and consumer installed femtocells, to expand our nation's wireless footprint in a cost-effective manner deeper into rural America.

I would like to thank the staff for their work on this item, and look forward to working closely with the Chairman and my fellow commissioners on universal service reform measures.